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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 215.

THE MARINE AND RIVER PHOSPHATE MINING AND MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

WILLIAM L. BRADLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED JULY 14, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 215.

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1 No. 1.

THE UNITED STATES OF AMERICA,
District of South Carolina, to wit:

At a circuit court of the United States for the fourth circuit, in and for the district of South Carolina, begun and holden at Charleston, in the district aforesaid, on the first Monday in April, 1877, before the honorable Hugh L. Bond and the honorable George S. Bryan, judges of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

WILLIAM L. BRADLEY, COMPLAINANT,
vs.
THE MARINE AND RIVER PHOSPHATE MINING and manufacturing Company, of South Carolina, Louis D. Mowry, and others, defendants.

2 Be it remembered that heretofore, to wit, on the 5th day of July, in the year of our Lord one thousand eight hundred and seventy-seven, the said William L. Bradley impleaded the said The Marine and River Phosphate Mining and Manufacturing Company, of South Carolina, Louis D. Mowry, and others, in a bill of complaint for relief, as follows:

No. 2.—*Bill.*

UNITED STATES OF AMERICA,
District of South Carolina, fourth circuit:

To the judges of the circuit court of the United States within and for the district of South Carolina, sitting in equity:

I. William L. Bradley, a citizen of the State of Massachusetts, brings this his bill of complaint against The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, a corporation created by the authority of the statutes of South Carolina; Louis D. Mowry, Francis J. Pelzer, Francis S. Rodgers, Wesley G. Muckenfuss, and Thomas S. Inglesby, partners, doing business in the city of Charleston under the name and style of Pelzer, Rodgers & Co.

George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor, and Robert S. Cathcart, partners, doing business in the city of Charleston under the name and style of George W. Williams & Co.

Theodore D. Jervey, junior, The South Carolina Phosphate and Phosphatic River Mining Company of the State of South Carolina, a corporation created under the laws of the State of South Carolina; A. Canale, as president of said last mentioned corporation; and The People's National Bank, a corporation created under the laws of the United States, and doing business in the city of Charleston; all citizens of the State of South Carolina, as your orator is informed and believes.

And therefore your orator complains, and says—

That by due course of trade, and for a good and valid consideration, your orator became and now is the lawful owner, holder, and bearer of the bond of the defendant The Marine and River Phosphate Mining

and Manufacturing Company of South Carolina, dated the 28th day of December, A. D. 1872, executed and delivered by said company
3 on that date to William J. Gayer, receiver, to secure the payment to him, said William J. Gayer, receiver, of the sum of twenty thousand dollars, money loaned by said Gayer to said company, and interest thereon at the rate of ten per cent. per annum, payable semi-annually, and payable on the first day of July, A. D. 1873.

That said bond is in letters and figures as follows:

STATE OF SOUTH CAROLINA,
Charleston County:

Know all men by these presents that we, The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, are held and firmly bound unto William J. Gayer, receiver, in the sum of twenty thousand dollars, with interest thereon at the rate of ten per cent. annually, payable semi-annually, to be paid on the first day of July next ensuing the date hereof, for which payment well and truly to be made we, the said company, do hereby bind ourselves and our successors firmly by these presents.

In witness whereof the said company have caused their seal to be hereunto affixed the 28th day of December, A. D. 1872.

We, the said company, do further covenant and agree that the above bond constitutes a lien upon the property of the said company, and that the same is issued under and pursuant to the provisions of section thirty-nine of chapter sixty-four of the general statutes.

[SEAL.] D. T. CORBIN,
President Marine and River Phosphate Mining and Manufacturing Company of South Carolina.

REUBEN TOMLISON,
Treasurer.

II. And your orator further shows that after said bond had matured and was unpaid, to wit, on the 13th day of May, A. D. 1874, said defendant, The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, obtained, for a valuable consideration, from the holder of said bond an extension of the time of pay-
4 ment thereof till the first day of January, A. D. 1875. That the terms and conditions of said extension were by said defendant company endorsed upon said bond as follows, to wit:

In consideration of further forbearance on the part of the holder of this bond till the 1st day of January, A. D. 1875, The Marine and River Phosphate Mining and Manufacturing Company of South Carolina hereby promises, waiving all set off or other defense, to pay this bond to bearer on the first day January, A. D. 1875, with interest at the rate of twelve per cent. per annum from the first day of April, A. D. 1874, payable quarterly; and should said bond not be paid on the first day of January next, then thereafter interest shall be paid in the same manner and at the same rate as herein mentioned, till paid.

THE MARINE AND RIVER PHOSPHATE MINING AND
[Read] MANUFACTURING COMPANY OF SOUTH CAROLINA,
By D. T. CORBIN, *President.*

MAY 13TH, 1874.

REUBEN TOMLINSON,
Treasurer.

III. And your orator further says that upon the said terms and conditions said company obtained and had from the bearer of said bond the further forbearance mentioned in their said endorsement on said bond.

IV. And your orator further says, on information and belief, that said William J. Gayer, receiver, after the execution and delivery of said bond to him, to wit, on or about the 27th day of January, A. D. 1873, was relieved from his receivership, and the said bond, among other things, by order of the court of common pleas, passed into the hands of Jacob Williman, clerk of the court of common pleas for Charleston County, and subsequently said bond, on or about the 9th day of February, 1874, by order of the court of common pleas, passed into the hands of C. C. Puffer as receiver.

That subsequently, to wit, on or about the 2d day of April,
5 A. D. 1874, said bond was, for a valuable consideration, duly assigned, transferred, and delivered by said C. C. Puffer, receiver, to one A. J. Coe, who subsequently, to wit, on or about the 20th day of May, A. D. 1874, for a valuable consideration, duly assigned, transferred, and delivered said bond to D. T. Corbin, who in turn, for a valuable consideration, subsequently sold and delivered said bond to your orator.

V. And your orator, on information and belief, further says that said successive assignments to Jacob Williman, clerk of court, C. C. Puffer, receiver, A. J. Coe, and D. T. Corbin were well known to the officers, to wit, the president, directors, and treasurer of said The Marine and River Phosphate Mining and Manufacturing Company, and, without objection, the same were acquies'ed in from the 13th day of May, 1874, till the 1st of January, 1877. That said company paid the interest at the rate of twelve per cent. per annum quarterly to the holder and owner thereof, to wit, D. T. Corbin, from April 1st, 1874, till January 1st, 1877; and also, in December, 1876, paid ten thousand dollars cash on account of the principal of said bond to D. T. Corbin.

VI. And your orator further says that said bond, after the execution and delivery thereof to William J. Gayer, receiver, was duly recorded in the office of the register for mesne conveyance for Charleston County, in book H 16, page 294, on the third day of January, 1873.

VII. And your orator further says that said bond, by virtue of the covenant and agreement therein contained, and by virtue of the record thereof in the office of the register of mesne conveyances for Charleston County, became, and was, and now is, a lien upon all the property of said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina.

That among the property possessed by said company at the time of the execution and delivery of said bond were three steam dredg-
6 ing-machines, numbered one, two, and three, with all their engines, boilers, tackle, and machinery, in good order attached; also three steam phosphate-washers and eleven large lighters, of a capacity of from eighty to one hundred tons, and one steam-tug, known as the Gazelle; and also the right and franchise granted by the State of South Carolina to dig, mine, and remove from the bed of the navigable streams and waters within the jurisdiction of the State of South Carolina the phosphate rock and phosphate deposits; for a more particular description of which franchise and right reference is had to

the act of the general assembly of the State of South Carolina entitled "An act to grant to certain persons therein named, and their associates, the right to dig and mine in the beds of the navigable streams and waters of the State of South Carolina for phosphate rocks and phosphatic deposits," passed March 1st, 1870.

VIII. That said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina is still in possession of said described property, and the same is still subject to the lien created by the covenant and agreement contained in the said bond, and to secure the payment of said bond.

IX. And your orator further says, on information and belief, that the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina is a corporation organized under the laws of the State of South Carolina, to wit, under the act entitled "An act to regulate the formation of corporations," approved December 10th, 1869, and subsequently amended by act of March 9th, 1871, and incorporated in the general statutes of South Carolina, in chapter 64, pages 357 and following.

That said company was organized on or about the 15th day of March, A. D. 1870, to continue for the term of twenty-one years, and, by its articles of association, its capital stock was fixed and limited to the sum of five hundred thousand dollars; and, by a by-law of said company, the said capital stock was divided into shares of the par value of one hundred dollars each.

7 X. And your orator further says, on information and belief, that at the time of the execution and delivery of the bond hereinbefore mentioned of December 28th, 1872, the said capital stock of said company was and remained as fixed and limited by the articles of association at five thousand dollars, and the number and par value of the shares of stock remained as determined by the by-law aforesaid.

XI. And your orator, on information and belief, says, that of said capital stock of five hundred thousand dollars "agreed to be contributed and paid in," for the purposes of said company, but two hundred and fifty thousand dollars thereof, or fifty dollars per share, had actually been contributed and paid in by the stockholders at the time of the execution and delivery of said bond of December 28th, 1872, and no other or further sum over and above two hundred and fifty thousand dollars, of fifty dollars per share, has at any time since been contributed and paid in by the stockholders of said company.

XII. And your orator, on information and belief, says that the defendant Louis D. Mowry is the owner and holder of one hundred and twenty-five shares of the said capital stock of said company, and the same appears of record on the books of said company.

XIII. That the defendants Pelzer, Rodgers and Company are the owners and holders of one hundred and seventy-six shares of the said capital stock of said company, and the same appears of record on the books of said company.

XIV. That the defendants George W. Williams and Company are the owners and holders of one hundred and twenty-eight shares of the said capital stock of said company, and the same appears of record on the books of said company.

XV. That Theodore D. Jervey, jr., defendant, is the owner and holder of one hundred and twenty-five shares of the said capital stock of said company, and the same appears of record on the books of said company.

8 XVI. That the defendant The South Carolina Phosphate and

Phosphatic River Mining Company in the State of South Carolina is the owner and holder of four hundred and ten shares of the said capital stock of said company, and the same appears of record on the books of said company in the name of A. Canale, the president of of said company.

XVII. That the People's National Bank, of Charleston, South Carolina, is the owner and holder of one hundred and thirteen shares of the said capital stock of said company, and the same appears of record on the books of said company.

XVIII. And your orator further says that section 23 of chapter 64 of the General Statutes of South Carolina, under which said defendant's company is organized, provides as follows: "The members of every company shall be jointly and severally liable for all debts and contracts made by the company until the whole amount of capital stock fixed and limited by the company in manner aforesaid is paid in, and a certificate thereof made and recorded as prescribed by the following section."

XIX. And your orator further says that the defendants Louis D. Mowry, Pelzer, Rodgers and Company, George W. Williams and Company, Theodore D. Jervey, junior, The South Carolina Phosphate and Phosphatic River Mining Company in South Carolina, and the People's National Bank, being members and holders, severally, of the capital stock of said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, who had not fully paid up on the 28th day of December, 1872, nor since fully paid in their subscription to said stock, are jointly and severally liable to your orator for the amount due and unpaid upon said bond made and delivered on the 28th day of December, 1872.

XX. And your orator further says, on information and belief, that some of the stockholders in said corporation are insolvent, and
9 some reside without the limits of this judicial district and out of the State of South Carolina, and they cannot therefore be made parties to this suit; and there are yet others whose names, and the amount of stock held by each of them respectively, and the amounts paid in by them, are unknown to your orator.

That to bring a separate and distinct action at law against each of such stockholders would be a great hardship to your orator, inasmuch as a court of equity has full power to hear and adjudicate all the issues between your orator and the said several defendants, thus preventing a multiplicity of suits; and by ascertaining the number of shares of the capital stock of the said Marine and River Mining and Manufacturing Company of South Carolina held by the said several defendants, the amount of the subscription paid upon each of said shares, and the amount still due and unpaid thereupon, can adjust and decree the amount which each of said defendants justly owes to your orator, and can afford him that relief which a court of law is unable to give.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed; and upon their several and respective corporal oaths, and according to the best and utmost of their respective knowledge, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respect*fully* required to answer, that is to say:

1. Whether the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina did not, in consideration of money loaned, execute and deliver to William J. Gayer, receiver,

the bond of December 28th, 1872, described in the first paragraph of this bill?

2. Whether the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina did not, on the 13th day of May, A. D. 1874, obtain from the then bearer of said bond an extension of the time of payment thereof till the first day of January following, and were not the terms and conditions upon which said extension were obtained endorsed under the seal of said company upon said bond, in form as alleged in paragraph two of this bill?

3. Whether the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina did not, upon complying with the terms and conditions set forth in their endorsement of May 13th, 1874, on said bond, receive the forbearance therein mentioned?

4. Whether said bond of December 28, 1872, executed and delivered by the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, in the bill mentioned, did not, by order of the court of common pleas for Charleston County, pass successively from the possession of William J. Gayer, receiver, to that of Jacob Williman, clerk of court, and C. C. Puffer, receiver, and then, for av aluable consideration, by assignment from C. C. Puffer, receiver, to A. J. Coe, and then subsequently by assignment from A. J. Coe to D. T. Corbin?

5. Whether the successive transfers and assignments of said bond of December 28th, 1872, from William J. Gayer, receiver, to Jacob Williman, clerk of court, to C. C. Puffer, receiver, to A. J. Coe, to D. T. Corbin, were not well known, and, without objection, acquiesced in by the officers, to wit, the president and directors and treasurer of said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, from the 13th day of May, 1874, till the first day of January, 1877; and did not said company pay the interest at the rate of twelve per cent. per annum, quarterly, from the first day of April, 1874, till the first day of January, 1877, to D. T. Corbin; and also in December, 1876, pay to said D. T. Corbin ten thousand dollars on account of the principal of said bond?

6. Whether said bond of said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, of December 28th, 1872, was not, on the 3d day of January, A. D. 1873, duly recorded in the office of the register of mesne conveyance for Charleston County, in book "H" 16, page 294?

11 7. Whether said bond became, and was, and now is, a lien upon the property of the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, as alleged in the 7th paragraph of this bill?

8. Whether the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina is still possessed of the property described in the 7th paragraph of this bill, and the same is still subject to the lien created by the covenant and agreement contained in said bond of December 28th, 1872, and to secure the payment of the said bond?

9. Whether the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina is a corporation organized under the laws of the State of South Carolina, as alleged in paragraph 9 of this bill; and whether the same was organized on or about the 1st day of March, 1870, to continue for the term of twenty-one years, and whether its capital stock was fixed and limited to the sum of five hundred thousand dollars by its articles of association; and whether said

capital stock was by a by-law of said company divided into shares of the par value of one hundred dollars each?

10. Whether at the time of the execution and delivery of the bond of December 28th, 1872, mentioned in this bill of complaint, the capital stock of said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina was and remained, as fixed and limited by the articles of association, at five hundred thousand dollars, and the par value of the shares of said stock, as determined by the by-laws of said company, at one hundred dollars each?

11. Whether of the capital stock of said company, of five hundred thousand dollars, agreed to be contributed and paid in, more than two hundred and fifty thousand dollars, or fifty dollars per share, had actually been contributed and paid in by the several stockholders, at the time of the execution and delivery of said bond of December 28th, 1872, by said company, or has since been contributed and paid by the stockholders? If so, by which of the shareholders were such contributions made, when were they made, and what amount per share was contributed?

12 12. Whether the defendant Louis D. Mowry is the owner and holder of one hundred and twenty-five of the said capital stock of said company, The Marine and River Phosphate Mining and Manufacturing Company of South Carolina? Do not the records of said company show that number of shares standing in his name?

13. Whether the defendants George W. Williams and Company are the owners and holders of one hundred and twenty-eight shares of the said capital stock of said company? Do not the records of said company show that number of shares standing in their name?

14. Whether the defendants Pelzer, Rodgers and Company are the owners and holders of one hundred and seventy-six shares of the said capital stock of said company? Do not the records of stock of said company show that number of shares standing in their name?

15. Whether Theodore D. Jervey, junior, defendant, is the owner and holder of one hundred and twenty-five shares of the said capital stock of said company, or any other number, and what number? Do not the records of stock of said company show 125 shares standing in his name?

16. Whether the defendant The South Carolina Phosphate and Phosphatic River Mining Company in the State of South Carolina, of which A. Canale is president, is the owner and holder of four hundred and ten shares of the capital stock of said company, or any other number of said shares, and what number said company possesses, or had on interest, in that number of shares standing in the name of A. Canale, president of said company? Do not the records of stock of said company show that number of shares standing in the name of A. Canale, president of said company?

17. Whether the defendant The People's National Bank owns and holds one hundred and thirteen shares of the said capital stock of said company, or any other number? Do not the records of said company show 113 shares standing in the name of said bank?

18. Whether section 22 of chapter 64 of the general statutes of South Carolina is not correctly set out in paragraph 18 of this bill?

13 19. Whether the defendants named in paragraph 19 of the bill are not jointly and severally liable as in said paragraph alleged?

And further, that the said defendant The Marine and River Phosphate Mining and Manufacturing Company of South Carolina be decreed to be indebted to your orator in the sum of ten thousand dol

lars, with interest thereon at the rate of twelve per cent. per annum, payable quarterly, since the first day of January, A. D. 1877; and further, that said sum of ten thousand dollars and interest be decreed to be a lien upon the property of said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, described in the bill, and that lien be foreclosed and said property be sold or so much thereof as may be necessary for the payment and satisfaction of said sum of ten thousand dollars and interest due and owing your orator.

And further, that said defendents Louis D. Mowry, Pelzer, Rogers and Company, George W. Williams and Company, Theodore D. Jervey, junior, The South Carolina Phosphate and Phosphatic River Mining Company in the State of South Carolina, of which A. Canale is the president, and The People's National Bank be decreed to be jointly and severally liable to your orator for the said sum of ten thousand dollars and interest, and be decreed to pay so much of the unpaid subscription upon each share of the stock of said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina held by them severally as shall be necessary to satisfy the just demand of your orator.

And that your orator may have such other and further relief in the premises as the nature of the circumstances of this case may require and to your honors shall seem meet.

May it please your honors to grant unto your orator your writ of subpœna, to be directed to the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, Louis D. Mowry, Francis J. Pelzer, Francis S. Rodgers, Wesley G.
14 Muckenfuss, and Thomas S. Inglesby, partners, doing business under the name and style of Pelzer, Rodgers and Company; George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, junior, Frank E. Taylor, and Robert S. Cathcart, partners, doing business under the name and style of George W. Williams and Company; Theodore D. Jervey, junior, The South Carolina Phosphate and Phosphatic River Mining Company in the State of South Carolina, of which A. Canale is president, and The People's National Bank, commanding them, on a certain day, and under a certain penalty to be therein named, to be and appear before your honors, in this honorable court, then and there true, direct, and perfect answer make to all and singular the premises, and to abide and perform such further order and decree in the premises as to your honors shall seem meet.

And your orator will ever pray, &c.

WILLIAM L. BRADLEY.

CORBIN & STONE,
Complainant's Solicitors.

THE UNITED STATES OF AMERICA.
District of Massachusetts:

On the second day of July, before me, personally appeared William L. Bradley, and made oath that he has read the above bill subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be on information and belief, and as to those matters he believes them to be true.

WILLIAM L. BRADLEY.

Subscribed and sworn to by the above named Wm. L. Bradley, before me, at Boston, July 2, A. D. 1877.

[SEAL.] SAMUEL JENNISON,
Notary Public in and for Suffolk Co., Mass.

15 No. 3.—*Note.*

The Marine and River Phosphate Mining and Manufacturing Company of South Carolina is required to answer all the interrogatories numbered one to nineteen inclusive.

The defendant Louis D. Mowry is required to answer the interrogatories numbered 9, 10, 11, 12, 18, and 19.

The defendants George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor, and Robert S. Cathcart are required to answer the interrogatories numbered 9, 10, 11, 13, 18, and 19.

The defendants Francis J. Pelzer, Francis S. Rodgers, Wesley G. Muckenfuss, and Thomas S. Inglesby are required to answer the interrogatories numbered 9, 10, 11, 14, 18, and 19.

The defendant Theodore D. Jervey, junior, is required to answer the interrogatories numbered 9, 10, 11, 15, 18, and 19.

The defendants The South Carolina Phosphate and Phosphatic River Mining Company in the State of South Carolina and A. Canale are required to answer the interrogatories numbered 9, 10, 11, 16, 18, and 19.

The defendants The People's National Bank is required to answer the interrogatories numbered 9, 10, 11, 17, 18, and 19.

16 No. 4.—*Subpœna.*

UNITED STATES OF AMERICA:

(Original.)

WM. L. BRADLEY *vs.* THE MARINE AND RIVER PHOSPHATE COMPANY and others.	In equity. Subpœna ad re.

Corbin & Stone, complainant's solicitors.
Filed 5 July, 1877. J. E. Hagood, C. C. C. U. S., dist. S. C.

UNITED STATES OF AMERICA.
Fourth Circuit, State of South Carolina:

The President of the United States of America to The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, Louis D. Mowry, Francis J. Pelzer, Francis S. Rodgers, Wesley G. Muckenfuss, Thomas S. Inglesby, George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor, and Robert S. Cathcart, Theodore D. Jervey, The South Carolina Phosphate and Phosphatic Mining Company in the State of South Carolina, A. Canale, The People's National Bank:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the first Monday of August, twenty days

after the service thereof, then and there true and perfect answers to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of

And also that you do, on the rules day next immediately after
17 the day appointed and expressed, file, or cause to be filed, in the registry of said court your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not under the pain of one hundred pounds.

Witness the honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina district aforesaid, the fifth day of July, in the year of our Lord one thousand eight hundred and seventy-seven, and in the 102d year of the sovereignty and Independence of the United States of America.

CORBIN & STONE,
Complainant's Solicitors.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

MEMORANDUM.—The defendant is to enter his appearance in this suit in the clerk's office on or before the day at which the writ is returnable; otherwise, the bill may be taken pro confesso.

Entered, civil docket, folio 139, July 5, 1877.

R. M. WALLACE,
U. S. Marshal.

Marshal's costs: 15 services and entry, $30.25.

U. S. MARSHAL'S OFFICE,
Charleston, S. C., July 6th, 1877.

I certify that I have this day personally served true copies of the within subpœna ad. re on Jos. R. Robertson, president Marine and River Mining and Manufacturing Company of South Carolina, for said Jos. R. Robertson, as president, and by leaving copies with him for William Birnie, now in New York, and for James Bridges, jr., now in Atlanta, Ga., and by handing in person copies on Louis D. Mowry, Francis J. Pelzer, Francis S. Rodgers, Wesley G. Muckenfuss, Thos. S. Inglesby, Geo. W. Williams, Frank E. Taylor, Robt. S. Cathcart, Theo. D. Jervey, The So. Ca. Phosphate and Phosphatic Mining Co., in the State of South Carolina, on A. Canale, the People's National Bank, on C. O. Witte, the president, and on Joseph R. Robertson—15 services.

ANDREW M. MORELAND,
Deputy U. S. Marshal.

18 And on the 19th day of July, A. D. 1877, came into court the defendants George W. Williams and Company, by their solicitors, Buist and Buist, and obtained the following order for stipulation for costs, which order is in the words and tenor following:

No. 5.—*Order for stipulation for costs.*

THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In the circuit court.

WILLIAM L. BRADLEY, A CITIZEN OF THE State of Massachusetts, complainant,
against
THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company of South Carolina, a corporation created by the authority of the statutes of South Carolina, et al., defendants.

On motion of Buist and Buist, solicitors of George W. Williams and Company, defendants, it is ordered that the complainant enter into security for costs of the said defendants George W. Williams and Company in the sum of one hundred dollars before J. E. Hagood, esquire, clerk of the court, and that the said defendants have leave to postpone the filing of their demurrer, plea, or answer to the bill of complaint until the entry of the said security.

19th July, '77.

GEO. S. BRYAN,
U. S. Judge Dist. S. C.

Filed 19 July, 1877. J. E. Hagood, C. C. C. U. S., dist. S. C.

19 And on the 19th of July, A. D. 1877, came into court the defendant The People's National Bank, by its solicitors, Simonton and Barker, and obtained the following order for security for costs; which order is in the words and tenor following:

No. 6.—*Order for security for costs.*

THE UNITED STATES OF AMERICA,
District of South Carolina:

WILLIAM L. BRADLEY
vs.
THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Co. et al.

On motion of Simonton & Barker, attorneys for The People's National Bank, it is ordered that the complainant enter into security for costs of the defendant The People's National Bank in the sum of one hundred dollars, before the clerk of the circuit court of the U. S. for this district, and that the said defendant have leave to postpone the filing of their demurrer plea, or answer until the entry of said security.

19th July, '77.

GEO. S. BRYAN,
U. S. Judge Dist. S. C.

Filed 19 July, 1877. J. E. Hagood, C. C. C. U. S., dist. S. C.

And on the 27th day of July, A. D. 1877, came into court the defendant The People's National Bank, by its solicitors, Simonton and Barker, and filed the following answer; which answer is in the words and tenor following:

No. 7.—*Answers.*

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit, in Equity:

The answer of the People's National Bank, a defendant, impleaded with Louis D. Mowry, Pelzer, Rodgers & Co., Theodore D. Jervey, jr., and The South Carolina Phosphate & Phosphatic River Mining Company, to the bill of complaint of William L. Bradley, complainant.

This defendent, saving and reserving to itself all and all manner of exception to the said bill of complaint, for answer thereto, or to such parts thereof as it is advised that it is material for it to make answer unto, answering, says:

20 That in answer to the 17th interrogatory, it denies that the said People's National Bank owns and holds one hundred and thirteen shares, or any other number of shares whatsoever, of the capital of the Marine and River Phosphate Mining and Manufacturing Company of South Carolina.

That it does not know whether the records of said company show one hundred and thirteen shares standing in the name of said bank, and it avers that if said record shows this it is wholly untrue.

That it knows nothing whatsoever of any of the other matters and things in said bill contained, and prays to be hence dismissed, and so forth.

CHAS. O. WITTE,
Pres. People's Nat. Bank.

SIMONTON & BARKER,
Def'd't's Att'ys.

THE STATE OF SOUTH CAROLINA,
Charleston County:

Charles O. Witte, esq., president of The People's National Bank, one of the defendants in this action, being duly sworn, says that the above answer is true of his own knowledge except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

CHAS. O. WITTE.

Sworn to before me this 27 July, 1877.
[SEAL.] JOHN L. ROBERTS,
Notary Public.

Filed 27th July, 1877. J. E. Hagood, C. C. C. U. S., dist. S. C.

And on the 4th day of August, A. D. 1877, came into court the defendant The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, by its solicitor, W. St. Julien Jervey, and filed the following answer; which answer is in the words and tenor following:

No. 8.—*Answer.*

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina, in Equity:

WILLIAM L. BRADLEY, A CITIZEN OF MASsachusetts,
vs.
THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company of South Carolina, L. D. Mowry, et al.

21 The separate answer of the Marine and River Phosphate Mining and Manufacturing Company of South Carolina, a body corporate and politic under the laws of the State of South Carolina, to the bill of complaint of William L. Bradley.

This defendant, now and at all times hereafter saving and reserving to itself all right and benefit of exception to the said bill of complaint, for answer thereto says:

I. That this defendant denies each and every allegation in said bill of complaint alleged and made, except as hereinafter particularly admitted and set forth.

II. And for a further defence, this defendant avers as follows, to wit:

1. It admits that this defendant did, on the day and year in the said bill alleged, make the bond in the said bill described, and did deliver the same unto William J. Gayer, receiver of the bank of the State, in the sum of twenty thousand dollars, with interest thereon at the rate of ten per cent. annually, payable semi-annually, to be paid on the first day of July next ensuing the date thereof.

2. And that this defendant did further covenant and agree that said bond constitute a lien upon the property of said company.

3. And this defendant alleges that on or about the ninth day of January, 1874, C. C. Puffer was appointed receiver in the room and stead of said Wm. J. Gayer, relieved, and received of Jacob Williman, clerk of court, the said bond with the security aforesaid as an asset of said bank.

4. And that subsequently, to wit, on or about the day of , A. D. , said C. C. Puffer received stock of this company amounting to $30,000, in payment of said debt by order of the court, whereby said bond has been fully paid and discharged.

III. And for a further defence this defendant admits:

1. That it is a body corporate and politic under the laws of the State of South Carolina, and avers that D. T. Corbin in said bill al-
22 leged to have been the holder of the said bond was, at the time of the making of the said bond, as well as at the time of its payment to C. C. Puffer, receiver, president of this defendant; and by reason of said office was incapacitated to speculate in the paper of this defendant for his own account and advantage, but that all benefit and advantage growing out of his transactions with the creditors of this defendant incurred and accrued to the advantage of this defendant, and that the most that could have accrued to the said D. T. Corbin, by virtue of the payment aforesaid, was the right to receive from this defendant a return of so many shares of stock in this company as he may have advanced in payment of said debt.

2. And that the said endorsement alleged to have been made upon said bond on May 13th, 1874, purporting to be made by this defendant through its president, D. T. Corbin, is null and void, because in writing said endorsement the said D. T. Corbin, as president, attempted to guarantee to himself, as bearer, certain conditions and rights, whereas the board of directors of this company were not aware that the said Corbin was holder of said bond, and in fraud of the rights of its stockholders.

IV. And for a further defence this defendant says, that even if the alleged transfer and assignment of the said bond by said D. T. Corbin to the complainant was in fact made, yet such assignment only conveyed unto the complainant the right and title of said D. T. Corbin to the said bond, charged with all the equities, charges, and set-offs pertaining to said bond in the hands of the said D. T. Corbin.

And to the interrogatories in said bill of complaint propounded the said defendant answers through its acting president, to the best of his belief and information, as follows, to wit:

1, 2 and 3. To the first, second and third interrogatories he answers: Yes.

4. To the fourth interrogatory he answers: That he does not know.

5. To the fifth interrogatory he says: That as a director of the company at the time he did not know of, nor did he acquiesce in, all
23 the transfers and assignments therein mentioned; that interest at the rate of twelve per cent. per annum was paid on said bond from April 1, 1874, until January 1, 1877, and also $10,000 on account principal.

6. To the sixth interrogatory he answers: That he does not know.

7. This defendant objects to this interrogatory, as involving an opinion in law.

8. To the eighth interrogatory he answers: That the company is still possessed of the property named in paragraph 7 of the bill of complaint.

9. To the ninth interrogatory he answers: Yes.

10. To the tenth interrogatory he answers: Yes.

11. To the eleventh interrogatory he answers: No.

12. To the twelfth interrogatory he answers: That the records of the company do not show one hundred and twenty-five shares standing in the name of Louis D. Mowry.

13. To the thirteenth interrogatory he answers: Yes.

14. To the fourteenth interrogatory he answers and says: That at the date of the filing of the said bill of complaint there were one hundred and seventy-six shares standing in the name of Pelzer, Rodgers and Company, but that same have been since transferred.

15. To the fifteenth interrogatory he answers and says: That the records of the company do not show one hundred and twenty-five shares standing in the name of Theodore D. Jervey, junior.

16. To the sixteenth interrogatory he answers: No.

17. To the seventeenth interrogatory he answers: No.

18 and 19. To the eighteenth and nineteenth interrogatories he answers: That he excepts to them, as involving questions of law.

And this defendant denies all unlawful combination and confederacy in said bill charged, without that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready to aver, maintain and prove as this honorable court may direct, and humbly prays

24 to be hence dismissed, with his reasonable costs and charges in that behalf most wrongfully sustained.

JOSEPH R. ROBERTSON,
Acting President Marine and River Phosphate M. & M. Co.
[SEAL.] B. C. HARD, *Treas.*
W. ST. JULIEN JERVEY, *Solicitor.*

Filed 4th August, 1877. J. E. Hagood, C. C. C. U. S. dist. S. C.

And on the 4th day of August, A. D. 1877, came into court the defendants L. D. Mowry, Theodore D. Jervey, Francis J. Pelzer, Francis S. Rodgers, Wesley G. Muckenfuss, and Thomas S. Inglesby, by their solicitor, W. St. Julien Jervey, and filed the following answer; which answer is in the words and tenor following:

No. 9.—*Answer.*

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina, in equity:

WILLIAM L. BRADLEY, A CITIZEN OF MASSACHUSETTS,
vs.
THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company of South Carolina, L. D. Mowry, et al.

The answer of L. D. Mowry, Theodore D. Jervey, and Francis J. Pelzer, Francis S. Rodgers, Wesley G. Muckenfuss, and Thomas S. Inglesby, to the bill of complaint of William L. Bradley.

These defendants, now and at all times hereafter saving and reserving to themselves all right and benefit of exception to the said bill of complaint, for answer thereto say:

I. That they are ignorant almost wholly of the matters and things in the said bill of complaint set forth and alleged, wherefore they deny each and every the said matters and things, except as hereinafter set forth and admitted, putting the plaintiff upon his proof of the same.

II. And these defendants, for further answer, aver that they
25 are informed and believe that at or about the time in the said bill alleged the Marine and River Phosphate Mining and Manufacturing Company of South Carolina did make the bond in the said bill set forth, and did deliver the same unto Wm. J. Gayer, receiver of the Bank of the State, in the sum of $20,000, with interest thereon at the rate of ten (10) per cent. annually, payable semi-annually, to be paid on the first day of July next ensuing the date thereof.

1. And that said company did further covenant and agree that said bond should constitute a lien upon the property of said company.

3. And these defendants are further informed and believe that on or about the ninth day of January, 1874, C. C. Puffer was appointed receiver in the room and stead of said Wm. J. Gayer relieved, and received of Jacob Williman, clerk of court, the said bond with the security aforesaid as an asset of the said bank.

4. And that subsequently, to wit, on the day of , as these defendants are informed and believe, the said C. C. Puffer received stock of this company amounting to $30,000 in payment of said debt,

by order of the court, whereby said bond has been fully paid and discharged.

III. 1. And for a further defence these defendants admit that the Marine and River Phosphate Mining and Manufacturing Company of South Carolina is a body corporate and politic under the laws of the State of South Carolina, and aver that they are informed and believe that D. T. Corbin, in said bill alleged to have been the holder of the said bond, was at the time of the making of the said bond, as well as at the time of its payment to C. C. Puffer, receiver, president of said company, and by reason of said office was incapacitated to speculate in the paper of the said company for his own account and advantage, but that all benefit and advantage growing out of his transactions with the creditors of said company inured and accrued to the advantage of said company; and that the most that could have accrued to the said D. T. Corbin by virtue of the payment aforesaid was the right to receive from said company a return of so many shares of stock in said company as he may have advanced in payment of said debt.

26 2. And these defendants say that the endorsement alleged to have been made upon said bond on May 13th, 1874, purporting to be made by said company, through its president, D. T. Corbin, is null and void, because in writing said endorsement the said D. T. Corbin, as president, attempted to guarantee to himself, as bearer, certain conditions and rights, whereas the board of directors of this company were not aware that the said Corbin was holder of said bond and in fraud of the rights of the stockholders of said company.

IV. And for a further defence these defendants say that even if the alleged transfer and assignment of the said bond by said D. T. Corbin to the complainant were in fact made, yet such assignment only conveyed unto the complainant the right and title of said D. T. Corbin to the said bond, charged with all the equities, charges, and set-offs pertaining to said bond in the hands of the said D. T. Corbin.

V. And for a further defence these defendants say that they did not make nor deliver the said bond, nor were they, or either of them, stockholders in said company at the date of said bond.

To the interrogatories to these defendants propounded, they answer and say as follows:

9 and 10. These defendants answer to the ninth and tenth interrogatories: That they are so informed and believe.

11. To the eleventh interrogatory they answer: That they are informed that no more than $250,000 has been paid in.

12. To the twelfth interrogatory the defendant Louis D. Mowry answers and says: That the records of the company do not show one hundred and twenty-five shares standing in his name, but only seventy-five shares.

14. To the fourteenth interrogatory the defendants F. J. Pelzer, F. S. Rodgers, Wesley G. Muckenfuss, and Thos. S. Inglesby answer and say: That at the day of filing the bill of complaint herein there stood upon the books of the company one hundred and seventy-six shares in their names as Pelzer, Rodgers and Company, but that same have been since then transferred.

27 15. To the fifteenth interrogatory the defendant Theodore D. Jervey answers: That he holds no stock in the said company in his own right, but that there stands in his name, in trust for Mrs. E. H. Jervey, one hundred and twenty-five shares.

18 and 19. And to the eighteenth and nineteenth interrogatories the defendants except as involving opinions of law and not questions of fact.

And these defendants deny all unlawful combination and confederacy in said bill charged, without that any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge and belief of these defendants, all which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in that behalf most wrongfully sustained.

L. D. MOWRY.
THEO. D. JERVEY.
F. J. PELZER,
For Pelzer, Rodgers & Co.

W. ST. JULIEN JERVEY, *Solicitor.*

STATE OF SOUTH CAROLINA,
Charleston County:

Personally appeared L. D. Mowry, Theo. D. Jervey, and F. J. Pelzer, one of the firm of Pelzer, Rodger & Co., who, being sworn, say that they have read the foregoing answer, and that same is true so far as relates to matters and things stated and aver'ed on their own knowledge, and so far as regards matters and things affirmed on information and belief they believe them to be true.

L. D. MOWRY.
THEO. D. JERVEY.
F. J. PELZER.

Sworn to before me this 4th day of Aug., 1877.
[SEAL.] CHAS. S. JERVEY,
Notary Public.

Filed 4th August, 1877. J. E. Hagood, C. C. C. U. S., dist. S. C.

And on the 22nd day of August, A. D. 1877, came into court defendant The South Carolina Phosphate and Phosphatic River Mining Company, by its solicitor, A. G. Magrath, and filed the following answer; which answer is in the words and tenor following:

28

No. 10—*Answer.*

UNITED STATES OF AMERICA,
South Carolina district, fourth circuit, in equity:

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

The separate answer of the South Carolina Phosphate and Phosphatic River Mining Company, a corporation duly chartered by the law of the State of South Carolina, and impleaded with others, to the bill of complaint of William L. Bradley.

This defendant, now and hereafter saving and reserving all advantage and benefit of exception to the errors and uncertainties in the said bill of complaint contained, for answer thereunto says:

That the defendant became the purchaser of three hundred shares of the Marine and River Mining and Manufacturing Company of South

Carolina, which, as this defendant believes, was or claims to have been created a corporation under the law of the State of South Carolina for the purposes, and with the rights, powers, and privileges set forth in its charter.

That the three hundred shares so purchased were sold by the order of the honorable Charles H. Simonton, then being, and now, a referee appointed by the court of common pleas for the county of Charleston, in the State of South Carolina, in a certain cause in the said court, and entitled Dabney, Morgan and Company against The President and Directors of the Bank of the State of South Carolina and others; and that the said sale was, as this defendant believes, made under the order of the said court.

That of the manner, or upon what account, the said Charles H. Simonton, as such referee, became possessed of the said shares, this defendant has no other or further knowledge than that C. C. Puffer, who had been receiver in the above-stated case, in the settlement of his accounts as such receiver, did state to the said court that the said stock was by its order received by him in payment of a certain
29 debt due by the Marine and River Mining and Manufacturing Company to William J. Gayer, who had preceded the said C. C. Puffer as receiver, in the said case of Dabney, Morgan and Company. That the said indebtedness arose because of a loan of a certain sum of money made by the said William J. Gayer, as such receiver, by order of the said court, of the sum of twenty thousand dollars, to the Marine and River Mining and Manufacturing Company; which was proved by the bond of the said company to the said William J. Gayer as receiver; by him turned over to the said C. C. Puffer when he became receiver in the said case; and by him reported as paid by the transfer to him of the said shares so purchased, and now owned and held by this defendant. And the said bond is the bond set forth in the said bill of complaint, and for the payment of which relief is prayed in the said bill.

That of the matters and things set forth in the said bill of complaint, in which the complainant in the said bill sets forth his claim to be paid the said bond, and his title thereto as the holder and owner, this defendant says that it denies the same to be true, and asks that strict proof be required of the same.

This defendant says, that when it was known to it that a claim was made, or would be made, for the payment of the said bond to the honorable D. T. Corbin, who then claimed to be the owner and holder of the same, this defendant, as then being a stockholder because of the purchase of the said shares from the said Charles H. Simonton as referee, and interested as such stockholder in the claim so made against the Marine and River Mining and Manufacturing Company, united with the other parties interested in the said company in diligent search for the grounds upon which such claim was made.

That in such search it was made to appear that there was no entry made, or evidence of any kind, to show that any order of court had been made directing, requiring, or permitting the said C. C. Puffer to transfer to any person or persons the bond referred to in the said complaint; and that a close and searching investigation of the file
30 book and the papers in the cause have established the fact that no such order is to be found in the court.

That such order, if it were there, would be so inconsistent with the statement made by C. C. Puffer, the receiver, that he received under the order of the court the three hundred shares of stock in payment

of the said bond, as to force the belief that any court directing its officer to make transfer of a bond which it had caused to be paid was acting under some misapprehension too patent to allow any such order to operate as a prejudice and hardship upon the party who was entitled to the possession of the bond.

That whatever considerations were presented to the court because of which it directed three hundred shares of the stock of the Marine and River Mining and Manufacturing Company to be taken in payment of a debt of twenty thousand dollars, which money was a fund in court, and believed to be perfectly secured in the payment thereof, there cannot be any consideration which can be supposed to have induced a court, after discharging a debt to the case of Dabney, Morgan and Company by so inconsiderable a payment as that of the value of the said three hundred shares, to keep the claim still in existence against the debtor, and authorized the receiver, whose duty it was to have cancelled the bond, to transfer the same and give some other holder claim against the debtor for the whole amount of the bond. That moreover nowhere does it appear in the records of the Marine and River Mining and Manufacturing Company that there ever was received by the said company any sum or sums of money in consideration for the transfer of the said bond by the said C. C. Puffer. And particularly that it does not appear, and this defendant believes the fact to be so, that the said A. J. Coe, who is named in the said bill of complaint as the party to whom the said C. C. Puffer assigned the said bond, ever did pay to the said C. C. Puffer, receiver, as aforesaid, any sum or sums of money for the transfer to him of the said bond. And this defendant therefore not only denies that the said C. C. Puffer, receiver, as aforesaid, was authorized by any order of court, or otherwise, to
31 transfer the said bond to the said A. J. Coe, but moreover denies that the said A. J. Coe ever paid to the said C. C. Puffer, receiver, as aforesaid, any consideration for such transfer. And the said transfer by the said C. C. Puffer, receiver, as aforesaid, was wholly unauthorized, and did not vest in the said A. J. Coe, or in any person now holding the said bond, any right to the same, or any title thereto, against the Marine and River Phosphate Mining and Manufacturing Company or this defendant.

That at the time when the said bond was paid by the transfer to the said C. C. Puffer, as the receiver of the three hundred shares of stock of the said Marine and River Phosphate Mining and Manufacturing Company, the complainant and the said A. J. Coe, mentioned therein, were stockholders of the Marine and River Phosphate Mining and Manufacturing Company, and this defendant believes also directors of the same, and the said D. T. Corbin was the president of the said company, and as such they were cognizant of the fact, because of the transfer of stock on the books of the company, and must have known that the said bond of the company had been paid in the manner hereinbefore mentioned, and that the same should be in the possession of the said company cancelled.

That if it were otherwise than as is herein stated that the said bond was paid in the manner herein stated, but that the same was by any understanding or agreement so arranged that the claim of C. C. Puffer, referee, to the payment in full of the said bond was compromised for so small an amount as the value of three hundred shares of the capital stock of the Marine and River Phosphate Mining and Manufacturing Company, so that the claim of the said C. C. Puffer, as referee, against the said company was thenceforth as such referee paid, and the said

Marine and River Phosphate Mining and Manufacturing Company as to him in his capacity as receiver discharged, no officer, agent, or manager of the said company could by any private understanding or agreement keep alive the said bond as against the said company, and thereby secure to themselves, or either of them, the great benefit thereof, to the great injury of the company of which they were officers, agents, or managers.

32 And this defendant, further answering, says that as to all other matters and things in the said bill of complaint stated and set forth as to the said bond, except as is hereinbefore stated and set forth, this defendant has no knowledge, and asks for strict proof of the same.

This defendant, further answering, says that whether or not by the terms of the charter given to the Marine and River Phosphate Mining and Manufacturing Company the liability of the stockholders therein is of the kind and the extent set forth and charged in the said bill of complaint, this defendant, in a case where it would properly arise, would submit the same to the judgment of this honorable court. But this defendant submits that such is not the case set forth in the said bill of complaint. That if all the matters and things set forth in the said bill of complaint were true, which this defendant denies, even the complainant would have plain and adequate remedy at law, and therefore would have no right to as the exercise of the jurisdiction of this court, as a court of equity.

Wherefore the defendant 'as the benefit thereof as if demurrer upon that ground that were specially pleaded.

And this defendant, having answered and replied to all matters in the said bill necessary to be answered and replied to, asks to be hence dismissed, &c.

[SEAL.] A. CANALE,
Treasurer.

A. G. MAGRATH, *Solicitor.*
Filed 22 August, 1877. J. E. Hagood, C. C. C. U. S., dist. S. C.

And on the 22nd day of August, A. D. 1877, came into court the defendant, A. Canale by his solicitor, A. G. Magrath, and filed the following answer; which answer is in the words and tenor following:

No. 11.—*Answer.*

UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

To the honorable the judges of the circuit court:

The answer of A. Canale, one who has been impleaded, with others, to the bill of complaint of William L. Bradley.

33 This defendant, reserving all advantage and benefit of exception, says that he denies that he is the owner and holder of any portion of the capital stock of the Marine and River Mining and Manufacturing Company; that he is not a stockholder of the said company; nor is he in manner liable as stockholder or otherwise to the complainant for or because of the matters set forth in the said bill of complaint, if the same were true as is therein stated, but which so far as this defendant knows or believes he says are not true.

And this defendant, denying all matters and things in the said bill

of complaint whereof he is sought to be charged, asks to be hence dismissed, with his costs and charges in this behalf sustained.

A. CANALE.

A. G. MAGRATH,
Sol'r for A. Canale.

Filed 22 August, 1877. J. E. Hagood, C. C. C. U. S. dist., S. C.

And on the day of , 1877, came into court the complainant William L. Bradley, by his solicitors, Earle and Wells, and Campbells and Whaley, and filed the following notice; which notice is in the words and tenor following:

No. 12.—*Notice.*

THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In the circuit court.

WILLIAM L. BRADLEY, A CITIZEN OF THE State of Massachusetts, complainant,
against
THE MARINE AND RIVER PHOSPHATE MINing and Manufacturing Company of South Carolina, a corporation created by the authority of the statutes of South Carolina, et al., defendants.

To Mess. Simonton & Barker:

Please take notice that on Tuesday next, or as soon thereafter as counsel can be heard, we will move before the circuit court to modify the order herein made on the 19th of July ult., on the following grounds, to wit:

1. That the amount is excessive.
2. That the order was made without notice.
3. That it is not such an order as may be made upon a day other than rules day or upon a day in court, and was not made on a rules day or a day in court.

We shall insist upon a trial at this term.

EARLE & WELLS,
Plaintiff's Attorneys.

CAMPBELL & WHALEY,
Of Counsel.

34 And on the 20th day of December, A. D. 1877, came into court the complainant William L. Bradley, by his solicitor, W. E. Earle, and obtained the following order; which order is in the words and tenor following:

No. 13.—*Order.*

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In circuit court.

WILLIAM L. BRADLEY, COMPLAINANT,
vs.
THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Co. et. al., defendants.

On motion of Wm. E. Earle, complainant's solicitor, it is ordered that the orders herein heretofore made as to security of costs be, and they are hereby, rescinded, and the complainant shall deposit in the registry of the court two hundred dollars until he shall give a bond for security in that sum, to be approved by the clerk.

It is further ordered that it be referred to Jas. E. Hagood, esq., special master, to take testimony herein and report the same to the court.

HUGH L. BOND, *Ct. Judge.*

DEC. 20, 1877.

Filed 20 Dec., 1877. J. E. Hagood, C. C. C. U. S., dist. S. C.

And on the 20th day of December, A. D. 1877, came into court the defendants George W. Williams and Company, by their solicitors, Buist and Buist, and filed the following answer; which answer is in the words and tenor following:

No. 14.—*Answer.*

35 THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In the circuit court.

To the judges of the circuit court of the United States within and for the district of South Carolina, sitting in equity:

The separate answer of George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, junior, Frank E. Taylor, and Robert S. Cathcart, late copartners, doing business in the city of Charleston, in the State of South Carolina, under the style of George W. Williams and Company, to the bill of complaint of William L. Bradley, a citizen of the State of Massachusetts.

These defendants now at all times hereafter saving and reserving to themselves all benefit and advantage of exception which can or may be had or taken to the manifold errors, imperfections, and uncertainties in the complainant's said bill of complaint contained, for answer nevertheless thereto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

I. They have understood, and believe it to be true, that their codefendants The Marine and River Phosphate Mining and Manufacturing Company of South Carolina did, on the day alleged in the said bill,

make their bond in the said bill described and deliver the same unto W. J. Gayer, receiver of the Bank of the State, in the sum of twenty thousand dollars, with interest thereon at the rate of ten per cent. annually, payable semi-annually, to be paid on the first day of July next ensuing the date thereof, and that their said codefendants did further covenant and agree that said bond should constitute a lien upon the property of said company.

II. These defendants, further answering, allege that on or about the ninth day of January, 1874, C. C. Puffer was appointed receiver in the room and stead of said W. J. Gayer, relieved, and received of
36 Jacob Williman, clerk of court, the said bond with the security aforesaid as an asset of said bank; and that subsequently, to wit, on or about the day of , 187 , the said C. C. Puffer received stock of their said codefendants The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, amounting to thirty thousand dollars, in payment of said debt, by order of court, whereby said bond has been fully paid and discharged.

III. These defendants, further answering, say that their said codefendants The Marine and River Phosphate Mining and Manufacturing Company of South Carolina are a body corporate and politic under the laws of the State of South Carolina, and aver that D. T. Corbin, in said bill alleged to have been the holder of said bond, was at the time of making the said bond, as well as at the time of its payment to C. C. Puffer, receiver, president of said company, and by reason of said office was incapacitated to speculate in the paper of the said company for his own account and advantage, but that all benefit and advantage growing out of his transactions with the creditors of the said company enured and accrued to the advantage of the said company, and that the most that could have accrued to the said D. T. Corbin by virtue of the payment aforesaid was the right to receive from the said company a return of so many shares of stock in the said company as he may have advanced in payment of said debt, and that the said endorsement alleged to have been made upon said bond on May 3rd, 1874, purporting to be made by the said company through its then president, D. T. Corbin, is null and void, because in writing said endorsement the said D. T. Corbin, as president, attempted to guarantee to himself as bearer certain conditions and rights, whereas the board of directors of the said company, as these defendants are advised, were not aware that the said D. T. Corbin was holder of said bond in fraud of the rights of its stockholders.

IV. And these defendants, further answering, say that even if the alleged transfer and assignment of the said bond by said D. T. Corbin to the complainant was in fact made, yet such assignment only
37 conveyed unto the complainant the right, title, and interest of the said D. T. Corbin to the said bond, charged with all the equities, charges, and set-off pertaining to said bond in the hands of the said D. T. Corbin.

V. And these defendants, further answering, say they deny each and every allegation in said bill of complaint not hereinbefore specially admitted or controverted, or that they are in any wise liable or responsible to the said complainant on the said bond alleged to be held by him.

And these defendants in response to the ninth, tenth, eleventh, thirteenth, eighteenth, and nineteenth interrogatories, which they are required to answer separately and specifically, answering, say:

To the ninth interrogatory they answer: Yes.

To the tenth interrogatory they answer: Yes.

To the eleventh interrogatory they answer: No.

To the thirteenth interrogatory they answer: Yes.

To the eighteenth and nineteenth interrogatories they answer and say: They except to the same as involving questions of law.

And these defendants deny all unlawful combination and confederacy in said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonble costs and charges in this behalf most wrongfully sustained.

BUIST & BUIST,
Defendants' Solicitors.

THE STATE OF SOUTH CAROLINA,
County of Charleston:

Joseph R. Robertson, one of the defendants above named, being duly sworn, says that he is acquainted with the facts set forth in the foregoing answer; that the same is true to his own knowledge ex-
38 cept as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSEPH R. ROBERTSON.

Sworn to before me this sixth day of August, 1877.

P. EDWIN GREGORY,
Notary Public, S. C.

Filed 22 Dec., 1877. J. E. Hagood.

And on the 29th day of June, A. D. 1878, came into court the complainant, William L. Bradley, by his solicitors, Earle and Wells, and filed the following replication: which replication is in the words and tenor following:

No. 15.—*Replication.*

UNITED STATES OF AMERICA,
District of South Carolina:

WILLIAM L. BRADLEY, PLAINTIFF, *against* THE MARINE AND RIVER PHOSPHATE MINing and Manufacturing Co. of S. C. and L. D. Mowry et al., defendants.	In equity.

39 The replication of William L. Bradley, complainant, to the answer of the defendants.

This repliant saving and reserving unto himself all and all manner of advantages of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that

any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct.

And humbly prays as in and by his said bill he hath already prayed.

EARLE AND WELLS,
Complainant's Sol.

J. B. CAMPBELL,
Of Counsel.

40 And on the 7th day of October, A. D. 1878, came into court the defendant The Marine and River Phosphate Mining and Manufacturing Company, by its solicitor, W. St. Julien Jervey, and obtained the following order allowing plea to be filed; which order is in the words and tenor following:

No. 16.—*Order allowing plea to be filed.*

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

WM. L. BRADLEY, CITIZEN OF THE STATE OF Massachusetts,
vs.
THE MARINE & RIVER PHOSPHATE MINING and Manufacturing Company of South Carolina, a body corporate under the laws of the State of South Carolina.

On motion of W. St. Julien Jervey, defendants' solicitor, it is ordered that the foregoing plea of The Marine and River Phosphate Mining and Manufacturing Company of South Carolina be allowed to be filed.

7th Oct., 1878.

GEO. S. BRYAN,
U. S. Judge Dist. of So. Ca.

41 And on the 7th day of October, A. D. 1878, came into court the defendant The Marine and River Phosphate Mining and Manufacturing Company, by its solicitor, W. St. Julien Jervey, and filed the following plea; which plea is in the words and tenor following:

No. 17.—*Plea.*

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

WM. L. BRADLEY, CITIZEN OF THE STATE OF Massachusetts,
vs.
THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company of South Carolina, a body corporate under the laws of the State of South Carolina. } In equity.

The plea of the Marine and River Phosphate Mining and Manufacturing Company of South Carolina, defendant, to the bill of complaint of Wm. L. Bradley, complainant.

This defendant, by protestation, not confessing or acknowledg-
42 ing all or any of the matters and things in the said complainant's

bill of complaint mentioned and contained to be true in such sort, manner, and form as the same are therein set forth and alleged, for plea to the said bill say that this honorable court cannot have cognizance of this suit, because this is a suit to recover the contents of a chose in action in favor of an assignee, for the recovery of which suit could not have been prosecuted in this court if no assignment had been made, for the reason that the said bond was executed and delivered by the defendant company to Wm. J. Gayer, receiver of the Bank of State, a body corporate under the laws of the State of South Carolina, which being the same State under which exists the defendant company, this honorable court can have no jurisdiction.

Therefore, this defendant doth plead the said want of jurisdiction in bar to the said complainant's bill, and pray judgment of this hon-
43 orable court whether they should be compel'ed to make any further answer to the said bill, and pray to be hence dismissed, with their reasonable cost' and charges in this behalf most wrongfully sustained.

W. ST. JULIEN JERVEY,
Defendants' Solicitor.

STATE OF SOUTH CAROLINA,
Charleston County:

Personally appeared Jas. R. Robertson, who, being sworn, deposeth that he is the president of the Marine and River Phosphate Mining and Manufacturing Company of South Carolina, and that all the matters and things in the within plea alleged are true so far as they are of his own knowledge, and so far as they depend upon information and belief he believes them to be true, and that this plea is not made for purposes of delay.

JOSEPH R. ROBERTSON.

Sworn to before me this 24th day of Oct., 1878.
[SEAL.]

JAS. HYDE,
Notary Public.

44 I certify that I am attorney on the record for The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, and that I consider the points of law in the within plea well taken and valid.

Oct. 7, '78.

W. ST. JULIEN JERVEY.

And on the 7th day of October, A. D. 1878, came into court the defendants L. D. Mowry, T. D. Jervey, F. J. Pelzer, F. S. Rodgers, Wesley G. Muckenfuss, and Thomas S. Inglesby, by their solicitor, W. St. Julien Jervey, and obtained the following order allowing plea to be filed; which order is in the words and tenor following:

No. 18.—*Order allowing plea to be filed.*

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

WM. L. BRADLEY, CITIZEN OF THE STATE OF Massachusetts,
vs.
THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company of South
45 Carolina, a body corporate under the laws of the State of South Carolina. } In equity.

On motion of W. St. Julien Jervey, defendants' solicitor, it is ordered

the foregoing plea of L. D. Mowry, T. D. Jervey, F. J. Pelzer, F. S. Rodgers, Wesley G. Muckenfuss, and Thos. S. Inglesby, defendants in the above-entitled cause, be allowed to be filed.

GEO. S. BRYAN,
U. S. Judge Dist. of So. Ca.

7TH OCT., 1878.

And on the 7th day of October, A. D. 1878, came into court the defendants L. D. Mowry, T. D. Jervey, F. J. Pelzer, F. S. Rodgers, Wesley G. Muckenfuss, and Thomas S. Inglesby, by their solicitor, W. St. Julien Jervey, and filed the following plea; which plea is in the words and tenor following:

No. 19.—*Plea.*

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

WM. L. BRADLEY, CITIZEN OF THE STATE OF Massachusetts,
vs.
46 THE MARINE AND RIVER PHOSPHATE Mining and Manufacturing Company of the State of South Carolina, a body corporate under the laws of the State of South Carolina. } In equity.

The joint and several plea of L. D. Mowry, T. D. Jervey, F. J. Pelzer, F. S. Rodgers, Wesley G. Muckenfuss, and Thos. S. Inglesby, defendants to the bill of complaint of Wm. L. Bradley, complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill of complaint mentioned and contained to be true in such sort, manner, and form as the same are therein set forth and alleged for plea to the said bill, say that this honorable court cannot have cognizance of this suit because this is a suit to recover the contents of a chose in action in favor of an assignee, for the recovery of which suit could not have been prosecuted in this court if no assignment had been made, for
47 the reason that the said bond was executed and delivered by the defendant company to Wm. J. Gayer, receiver of the Bank of this State, a body corporate under the laws of the State of South Carolina, of which State these defendants are also citizens.

Therefore these defendants plead the said want of jurisdiction in bar to the said complainant's bill, and pray judgment of this honorable court whether they should be compelled to make any further answer to the bill, and pray to be hence dismissed, with their reasonable cost, and charges in this behalf most wrongfully sustained.

W. ST. JULIEN JERVEY,
Def'd'ts' Sol'r.

STATE OF SOUTH CAROLINA,
Charleston County:

Personally appeared L. D. Mowry, Theo. D. Jervey, & , one of the firm of Pelzer Rodgers & Co., who, being sworn, depose that
48 they are defendants in this case, and that all the matters and things in the within plea alleged are true so far as they are of

their own knowledge, and so far as they depend upon information and belief they believe them to be true, and that this plea is not made for purposes of delay.

THEO. D. JERVEY.
L. D. MOWRY.
FRANCIS J. PELZER.

Sworn to before me this 7 day of Oct., 1878.
[SEAL.] ARTHUR MAZYCK,
Notary Public.

I certify that I am attorney on the record for the L. D. Mowry, Theo. D. Jervey, and Pelzer, Rodgers and Company, and that I consider the points of law in the within plea well taken and valid.
Oct. 7, '78.

W. ST. JULIEN JERVEY.

And on the 22nd day of October, A. D. 1878, came into court the defendants George W. Williams and Company, by their solicitors, Buist and Buist, and filed the following plea; which plea is in the words and tenor following:

No. 20.—*Plea.*

49 THE UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

WILLIAM L. BRADLEY, A CITIZE OF THE State of Massachusetts, complainant,
vs.
THE MARINE AND RIVER PHOSPHATE MINing and Manufacturing Company of South Carolina et al., defendants.
} Plea. In equity.

The plea of George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, junior, Frank E. Taylor, and Robert S. Cathcart, late copartners, doing business in the city of Charleston, in the State of South Carolina, under the style of George W. Williams and Company, to the bill of complaint of William L. Bradley, a citizen of the State of Massachusetts.

These defendants, by protestation, not confessing or acknowl-
50 edging all or any of the matters and things in the said complainant's bill of complaint mentioned and contained to be true in such sort, manner, and form as the same are therein set forth and alleged for plea to the said bill, says that this honorable court cannot have cognizance of this suit because this is a suit to recover the contents of a chose in action in favor of an assignee, for the recovery of which suit would not have been prosecuted in this court if no assignment had been made, for the reason that the said bond was executed and delivered by their codefendant The Marine and River Phosphate Mining and Manufacturing Company of South Carolina to William J. Gayer, receiver of the president, directors, and company of the Bank of the State of South Carolina, a body corporate under the laws of the said State of South Carolina, which being the same State under which exists the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, this honorable court can have
51 no jurisdiction in this case.

Wherefore these defendants plead the said want of jurisdiction in bar to the said complainant's bill, and pray judgment of this honorable court whether they should be compelled to make any further or other answer to the said bill of complaint, and pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

BUIST & BUIST,
Def'ts' Sol'rs.

THE UNITED STATES OF AMERICA,
District of South Carolina:

Before me personally appeared Joseph R. Robertson, of the firm of George W. Williams and Company, who maketh oath and saith that the matters and things stated in the foregoing plea are true in point of fact, and that the said plea is not interposed for delay.

JOSEPH R. ROBERTSON.

Sworn to before me this twenty-second day of October, 1878.

SAMUEL S. BUIST,
Notary Public.

52 I certify that in my opinion the plea filed in this case is well founded in point of law.

HENRY BUIST.

No. 21.—*Trial of cause.*

And on the 20th day of December, A. D. 1878, this cause came up for hearing before the honorable Hugh L. Bond, circuit judge, and the honorable George S. Bryan, district judge presiding, and after hearing the bill, answers, pleadings, and testimony in the cause, and after arguments by solicitors for complainant and solicitors for defendants, the court took the case under consideration.

And on the 29th day of May, A. D. 1879, the honorable Hugh L. Bond, circuit judge, delivered the following opinion; which opinion is in the words and tenor following:

No. 22.—*Opinion.*

53 THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In the circuit court.

WILLIAM L. BRADLEY
vs.
THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company of South Carolina, Geo. W. Williams & Co., Pelzer, Rogers & Co., et al. } Opinion.

This cause came on to be heard upon the pleading, and the testimony taken and reported by James E. Hagood, special master. The substantial facts in the cause seem to be that the defendant company is a corporation under the laws of the State of South Carolina; was organized under the act entitled "An act to regulate the formation of corporations," approved December 10th, 1869, which act was subsequently

amended by act of March 9th, 1871. These acts were subsequently embodied in the General Statutes of South Carolina, in chapter 64, commencing on page 357. The capital stock of this corporation was fixed and limited at five hundred thousand dollars, and the same divided into five thousand shares, of one hundred dollars each. There has
54 been paid in of said capital stock but two hundred and fifty thousand dollars, or fifty dollars per share. It is admitted that at the date of the filing of the bill in this cause Louis D. Mowry was the owner and holder of seventy-five shares of said capital stock in said company; that F. J. Pelzer, F. S. Rogers, Wesley G. Muckenfuss and Thomas S. Inglesby, constituting the firm of Pelzer, Rogers & Co., were the owners and holders of one hundred and seventy-six shares of said capital stock in said company, and that George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor and Robert S. Cathcart, constituting the firm of Geo. W. Williams & Co., were the owners and holders of one hundred and twenty-eight shares of said capital stock in said company. These persons named were made, with the said company, defendants in this action, have answered, and are now before the court. The cause of action in this case grows out of the unpaid portion of a bond, executed by the defendant company on the 28th day of December, 1872, in the sum of twenty thousand dollars, to William J. Gayer, receiver.

This bond, it appears, was given for ($20,000) money loaned by said Gayer to the said company.

Said bond was payable on the first day of July following the date thereof, with interest at the rate of ten per cent. per annum.

In said bond is the following covenant: "We, the said company, do further covenant and agree that the above bond constitutes a lien upon the property of said company, and that the same is issued under and pursuant to the provisions of section 39 of chapter 64 of the General Statutes." That said bond was duly recorded in the office of the register of mesne conveyance, for Charleston County, South Carolina, on the third day of January, A. D. 1873. Said bond was not any portion of it paid at maturity by said Marine and River Phosphate Mining and Manufacturing Company of South Carolina, but was allowed to lie along without change or renewal (the said company paying the interest thereon) until some time in March, 1874, when C. C. Puffer, receiver,
55 successor of William J. Gayer, receiver, demanded payment of said bond. At the time of said demand for payment of said bond said company was in some financial embarrassment, and was not in possession of funds to pay the same. In consequence of this embarrassment, D. T. Corbin, who was then president of the company, induced one A. J. Coe to enter into negotiation with said C. C. Puffer, receiver, with the view to purchase said bond, he, said Corbin, furnishing said Coe, from his own private property, the means (three hundred shares, or $30,000 of the capital stock of said company) to effect such purchase.

The bond was purchased by Coe from C. C. Puffer, receiver, and the same was delivered to him.

This sale and delivery of said bond was effected about the middle of April, 1874. Soon after its purchase said A. J. Coe assigned and delivered said bond to said D. T. Corbin, in consideration of the thirty thousand dollars of stock advanced by him to said Coe to purchase said bond.

After said bond thus came into the possession of D. T. Corbin, he informed the board of directors of said company that the company could

have further indulgence in the payment of said bond if they would renew the same, and pay the regular bank rates of interest thereon—twelve per cent. per annum—and pay the same quarterly. Thereupon the board of directors, on the thirteenth day of May, 1874, directed the following endorsement to be written upon said bond, to wit:

"In consideration of further forbearance on the part of the holder of this bond till the first day of January, A. D. 1875, the Marine and River Phosphate Mining and Manufacturing Company of South Carolina hereby promises, waiving all set-off or other defence, to pay this bond to bearer on the first day of January, A. D. 1875, with interest at the rate of twelve per cent. per annum, from the first day of April, A. D. 1874, payable quarterly; and should said bond not be paid on the first day of January next, then thereafter interest shall be paid in the same manner and at the same rate as herein mentioned, till paid."

56 The said bond continued in the possession of D. T. Corbin from this time forward till June, 1877, when he sold and delivered the same to the complainant, Wm. L. Bradley, of Boston, Massachusetts.

Up to January 1st, 1877, said D. T. Corbin collected and received the interest as it fell due on said bond under the renewal agreement of May 13th, 1874; and in December, 1876, he collected and received from the company ten thousand dollars in money on account of the principal due on said bond.

It thus appears that there is due and unpaid on said bond the sum of ten thousand dollars, with interest thereon at the rate of twelve per cent. per annum, payable quarterly, from the first day of January, A. D. 1877. The defence to this action made by the defendant company is, first, that said bond was "paid" by the $30,000 in stock of said company, which said C. C. Puffer received therefor from A. J. Coe. As to this defence it is sufficient to say that there is no evidence that shows that said purchase of said bond by A. J. Coe was intended as a payment thereof. That none of the parties to this transaction—Puffer, Coe, or Corbin—so understood it, but the very reverse; and further, the consideration paid, although it was $30,000 of the capital stock of said company, was not the property of the company but the private property of D. T. Corbin.

It is not pretended that the company paid or furnished the means to pay said bond at the time C. C. Puffer parted with the same to A. J. Coe in April, 1874; and the only basis for the claim of payment is the entry made in the final accounts of C. C. Puffer, receiver, made to the court of common pleas for Charleston County, in which it appears that this bond is accounted for as "paid" by the transfer to him of three hundred shares of stock in the Marine and River Phosphate Mining and Manufacturing Company of South Carolina.

That this entry is not technically correct is shown by the admitted fact that the company furnished no means to pay the bond then, and neither did Corbin or Coe purchase on behalf of the company.

57 The entry is explained by Mr. Puffer as his method of recording the transaction, and it meant, so far as the fund in his hand as receiver was concerned, that the bond was exchanged for said $30,000 of stock. But it may be further remarked that neither Corbin or Coe, as far as appears, was a party to the said entry in Puffer's account as receiver, and that entry, hence, does not conclude them.

There is, therefore, no ground for asserting that said bond was or has been paid by or for the defendant company.

A further defence is made that D. T. Corbin was at the time of the purchase of said bond from C. C. Puffer the president of the defendant

company, and as such president he was incapacitated to speculate in the paper of the company, and so forth; and all benefit and advantage arising from said purchase of said bond by him inured to the benefit of the company, and so forth.

This defence set up, if sound in principle, which it is not, does not appear to have sufficient basis of fact to rest upon.

It is not alleged in the pleadings or proved by the evidence of the defendants that D. T. Corbin paid less than twenty thousand dollars in value for said bond, and hence there is no ground for saying he speculated in the sense of making profit out of the paper of the company.

So far as appears he paid a full price for the bond, and it still further appears that he entered into the transaction to protect the credit of the company and to save it from embarrassment, because the company was not in funds at the time to pay the bond. If D. T. Corbin, as the president and agent of the company, had purchased said bond with the funds or credit of the company, said transaction would now be held to have been made for the benefit of the company without doubt, and the company would be entitled to any benefit or advantage, if any, accruing therefrom. But as the transaction was made with his own means, and because the company had no means with which to make it, the bond became his own private property just as much as the private property was his that he exchanged for it.

58 There was nothing in his position as president that forbade the purchase of this bond if he chose to make it.

But it is further said that the renewal endorsement put upon the said bond by order of the board of directors on May 13th, 1877, was null and void, because said board was not aware at the time that said D. T. Corbin was the holder of said bond, and the same was in fraud of the rights of stockholders.

As to this defence, it may be again said it has no sufficient basis of fact to stand on. In the renewal of said bond, in the form that it was done, the board of directors obtained an indulgence in the postponement of the day of payment from D. T. Corbin precisely as they would have done from anybody else not connected with the company.

It is not shown that there was any fraud on his part, or that any wrong was done by him to the company or stockholders.

So far as said endorsement is concerned, it is evidently more to the advantage of the company than it was to Corbin. What did they receive by it?

Six months and a half delay in the payment of their bond, which was then nearly two years past due. What did they give for that indulgence?

They increased the rate of interest on said bond two per cent.; that is, promised to pay the then current bank rate of interest. They simply agreed to pay Corbin for his money what they would have been compelled to pay anybody else or just what anybody else would have paid him.

It is impossible to maintain that such a transaction was a fraud upon the company or its stockholders. As to the fact alleged, that the directors of the company did not know at the time they made the endorsement of May 13, 1874, upon the bond that D. T. Corbin, their president, actually owned and held the bond, it is disputed.

Mr. Reuben Tomlinson, then treasurer of the company, says they did know it; that he knew all about it, and so did most, if not all, the directors; that he conversed with them about it, and that it was

59 regarded as extremely fortunate for the company that the bond had fallen into friendly hands, and so forth.

It seems to me quite immaterial how the fact is, and quite as favorable to the plaintiff if the directors did not know that Corbin held the bond as it would be if they did know it. If they did not know it then it must be assumed that they were not influenced by the fact in taking the action that they did, that they acted impartially and as if dealing with a stranger, just as they should have acted.

As to the validity of the new contract of May 13th, 1874, renewing and extending said bond, there is no ground for questioning it. It was a bona fide transaction, made by the board of directors of the company with D. T. Corbin, then a director and president, by which the company got further time for payment upon their valid outstanding past-due bond. The bond being past due, Corbin was entitled to have the same paid at once. The extension of the bond, therefore, by him may be regarded as a loan to the company.

That any officer of a corporation may make a valid loan to it there is no doubt. Something has been said about a want of authority in C. C. Puffer, receiver, to sell and transfer said bond. This authority, if he had any, was derived from the court of common pleas for Charleston County, whose officer he was. If there was no authority to make the sale, then that court should deal with the receiver and his bondsmen. But it appears that the sale and transfer of said bond has been approved by the court of common pleas for Charleston County, and Mr. Puffer, as receiver, and his bond have been discharged. This court must, therefore, assume, under the circumstances, that Receiver Puffer had ample authority to made the sale and transfer of said bond. His authority cannot now be questioned in this collateral action in this court. The plea to the jurisdiction interposed in this cause by special permission after the defendants had answered, and the case was at issue, is overruled. By the terms of the endorsement of May 13th, 1874, put

60 upon the bond by the defendant company, the said bond became commercial paper, and the same passed from hand to hand by delivery. It does not, therefore, fall within the prohibition of the 11th section of the judiciary act of 1789.

The authorities upon this point are ample, and it is unnecessary to discuss them.

The result is that the plaintiff is entitled to a decree against the defendant company in the sum of ten thousand dollars, with interest thereon at the rate of twelve per cent. per annum, payable quarterly, from January 1st, 1877, to the present time. The defendants named as stockholders are, by the charter of the company, jointly and severally liable for the said sum, and the execution decreed against the company may, by the terms of the charter, be levied upon their property or the property of either of them. The plaintiff is also entitled to have the lien of the bond upon the property of the company foreclosed, and the property sold to pay and satisfy the sum now found to be due.

A decree will be entered in accordance with this opinion.

HUGH L. BOND.

MAY 29TH, 1879.

And on the 29th day of May, A. D. 1879, the honorable Hugh L. Bond, circuit judge, signed the following decree; which decree is in the words and tenor following:

No. 23.—*Decree.*

U. S. OF AMERICA,
Fourth Circuit Dist. of South Carolina:

In circuit court.

W. L. BRADLEY, COMPLAINANT,
vs.
61 THE MARINE & RIVER PHOSPHATE CO., Geo. W. Williams & Co., Pelzer, Rodgers & Co., et al. } Bill to foreclose mortgage, &c.

On motion of Earle and Wells, complainant's solicitors, it is ordered that the complainant have leave to enter judgment and issue execution against the defendants The Marine and River Phosphate Company, Geo. W. Williams & Co., and Pelzer, Rodgers & Co., and Louis D. Mowry, for the sum of ten thousand dollars, together with interest thereon at the rate of twelve per cent. per annum, payable quarterly, from January 1st, 1877, and the costs of the cause.

It is further ordered that the rights, title, and interest and equity of redemption of The Marine and River Phosphate Company be and the same is forever barred and foreclosed in and to all and singular the property covered by the lien given in the bond, and that the marshal, after advertising for fourteen days, do sell the same to the highest bidder for cash.

May 29th, 1879.

HUGH L. BOND.

62 And on the 10th day of June, A. D. 1879, came into court the complainant, William L. Bradley, by his solicitors, Earle and Wells, and obtained the following execution; which execution is in the words and tenor following:

No. 24.—*Execution.*

THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In the circuit court.

To Robert M. Wallace, United States marshal, or his lawful deputies, greeting:

Whereas judgment was rendered on the twenty-ninth day of May, A. D. 1879, in an action on a bill in equity in the circuit court of the United States for the district of South Carolina, between William L. Bradley, a citizen of the State of Massachusetts, complainant, and The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, a corporation created by the authority of the statutes of South Carolina; Louis D. Mowry, Francis J. Pelzer, Francis S.
63 Rodgers, Wesley G. Muckenfuss, and Thomas S. Inglesby, partners doing business in the city of Charleston under the name and style of Pelzer, Rodgers & Company; George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor, and Robert S. Cathcart, partners doing business in the city of Charleston under the name and style of George W. Williams & Company, citizens

of the State of South Carolina, defendants, in favor of said William L. Bradley, complainant, against the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina; Louis D. Mowry, Francis J. Pelzer, Francis S. Rodgers, Wesley G. Muckenfuss, and Thomas S. Inglesby, partners doing business under the name and style of Pelzer, Rodgers & Company; George W. Williams, William Birnie, Joseph R. Robertson, James Bridges, jr., Frank E. Taylor, and Robert S. Cathcart, partners doing business under the name and style of George W. Williams & Company, defendants, for the sum of thirteen
64 thousand one hundred and twenty $\frac{50}{100}$ dollars, with interest at the rate of seven per cent. per annum from the 29th day of May, 1879, and also for the sum of three hundred and ninety-nine $\frac{35}{100}$ dollars, costs and charges therein, as appears to us by the judgment & enrolled decree filed in the office of the clerk of the said court;

And whereas the sum of thirteen thousand one hundred and twenty $\frac{50}{100}$ dollars, with interest as aforesaid, and the sum of three hundred and ninety-nine $\frac{35}{100}$ dollars, cost and charges aforesaid, are now actually due thereon:

Therefore we command you that you satisfy the said judgment out of the personal property of the said judgment debtors within your district, or if sufficient personal property cannot be found, then out of the real property in your district belonging to such judgment debtors on the day when the said judgment was so docketed in your district, or at any time thereafter, in whose hands soever the same may be, and duly re-
65 turn this execution according to law to the clerk of the said court at Charleston, South Carolina.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, at clerk's office in the city of Charleston, S. C., this the 10th day of June, A. D. 1879.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.
EARLE & WELLS,
Plaintiff's Attorneys.

No. 25.—*Endorsements on execution.*

R. M. Wallace, U. S. marshal for said district, levy and collect thirteen thousand five hundred & nineteen $\frac{85}{100}$ dollars, with interest from the 29th May, 1879, besides your fees.

EARLE & WELLS,
Attorneys for Plaintiff.

And on the 11th day of June, A. D. 1879, came into court the defendants The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, George W. Williams, Francis J. Pelzer, F. S. Rodgers, Wesley G. Muckenfuss, Thomas S. Inglesby, and L. D.
66 Mowry, by their solicitors, and filed the following supersedeas bond; which bond is in the words and tenor following:

No. 26.—*Supersedeas bond.*

Supreme Court of the United States.

WILLIAM L. BRADLEY
against
THE MARINE AND RIVER PHOSPHATE MANUFACTURING CO., GEORGE W. WILLIAMS & COMPANY, PELZER, RODGERS & COMPANY, et al. } AND

Know all men by these presents that we, The Marine and River

Phosphate Mining and Manufacturing Company; George W. Williams and Joseph R. Robertson, surviving copartners of the late firm of George W. Williams & Company; Lewis D. Mowry, Francis J. Pelzer, Francis S. Rodgers, Wesley G. Muckenfuss, and Thomas S. Inglesby, copartners under the firm name of Pelzer, Rodgers & Company, of the city of Charleston, in the State of South Carolina, are held and firmly bound unto William L. Bradley, of the State of Massachusetts,
67 in the sum of twenty-five thousand dollars, to be paid to the said William L. Bradley, his executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators and successors, firmly by these presents. Sealed with our seals; dated this seventh day of June, A. D. 1879.

Whereas the above-named The Marine and River Phosphate Mining and Manufacturing Company, George W. Williams & Company, Lewis D. Mowry, and Pelzer, Rodgers & Company have prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the district of South Carolina.

Now, therefore, the condition of this obligation is such: that if
68 the above-named The Marine and River Phosphate Mining and Manufacturing Company, George W. Williams & Company, Lewis D. Mowry, and Pelzer, Rodgers & Company shall prosecute their said appeal to effect and answer all costs and damages if the said The Marine and River Phosphate Mining and Manufacturing Company, George W. Williams & Company, Lewis D. Mowry, and Pelzer, Rodgers and Company shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

[SEAL.] MARINE & RIVER PHOSPHATE MINING AND MANUFACTURING COMPANY OF S. C.,
By JOSEPH R. ROBERTSON, *Pres'd't.* [SEAL.]
GEO. W. WILLIAMS. [SEAL.]
JOSEPH R. ROBERTSON. [SEAL.]
FRANCIS J. PELZER. [SEAL.]
F. S. RODGERS. [SEAL.]
THOS. S. INGLESBY. [SEAL.]
L. D. MOWRY. [SEAL.]
W. G. MUCKENFUSS. [SEAL.]

Sealed and delivered in the presence of—
As to the signature of The Marine & River Phosphate Mining and Manufacturing Company of S. C., by Joseph R. Robertson, pres'd't,
69 George W. Williams, and Joseph R. Robertson—
P. EDWIN GREGORY.

Witness to signatures of Francis J. Pelzer, F. S. Rodgers, W. G. Muckenfuss, and T. S. Inglesby, and of L. D. Mowry—
SIMEON HYDE, Jr.

STATE OF SOUTH CAROLINA,
Charleston County:

Francis J. Pelzer, one of the obligors named in the within bond, being duly sworn, says that he is a resident and land-holder within this State, and is worth the sum of twenty-five thousand dollars over and above all his debts and liabilities which he owes or has incurred, and

exclusive of property exempt by law from levy and sale under an execution.

FRANCIS J. PELZER.

Sworn to before me this 10th day of June, 1879.

SIMEON HYDE, JR.,
Notary Public, S. C.

70 STATE OF SOUTH CAROLINA,
Charleston County:

George W. Williams, one of the obligors named in the within bond, being duly sworn, says that he is a resident and land-owner within this State, and is worth the sum of twenty-five thousand dollars over and above all his debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

Sworn to before me this seventh day of June, 1879.

[SEAL.] P. EDWIN GREGORY,
Notary Public, S. C.

Examined & approved.

GEO. S. BRYAN,
U. S. Judge Dist. of So. Ca.

11TH JUNE, 1879.

71 No. 27.

UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

WILLIAM L. BRADLEY, COMPLAINANT,
vs.
THE MARINE AND RIVER PHOSPHATE MINING & Manufacturing Company of South Carolina; Francis J. Pelzer, Francis S. Rodgers, Wesley G. Muckenfuss, & Thomas S. Inglesby, partners doing business under the name and style of Pelzer, Rodgers & Company; George W. Williams and Joseph R. Robertson, surviving partners of the copartnership doing business under the name and style of George W. Williams & Company; Lewis D. Mowry, and others, defendants.

And now the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, Pelzer, Rodgers & Company, and George W. Williams & Company, and Lewis D. Mowry, after a final decree entered in this cause against them, come and show to the court that the matter in dispute exceeds the sum of five thou-
72 sand dollars; and thereupon claim an appeal from the said final decree to the Supreme Court of the United States, to be holden at Washington on the second Monday in October next, and pray that the same may be accordingly allowed and, as appellants, they be ordered to serve the usual citation according to law. And further, that upon the execution of a supersedeas bond, duly approved, the same shall so operate.

BUIST & BUIST.
W. ST. JULIEN JERVEY.
THOS. S. INGLESBY.
A. G. MAGRATH.

The appellants having given bond as required by law, which is approved, this writ is allowed to operate as a supersedeas to the decree therein mentioned.

Witness the honorable George S. Bryan, this eleventh day of June, 1879.

GEO. S. BRYAN,
U. S. Judge D't of Co. Ca.

73 (Indorsed:) United States circuit court, South Carolina district, fourth circuit. (No. roll, 22.) W. L. Bradley vs. The Marine and River Phosphate Mining & Manufacturing Company, George W. Williams and Company, Pelzer, Rodgers and Company. Filed 11th June, 1879. J. E. Hagood, C. C. C. U. S., dist. S. C.

74 No. 28.

In the United States circuit court, South Carolina district, in equity.

WILLIAM L. BRADLEY
vs.
THE MARINE & RIVER PHOSPHATE MINING & Manufacturing Company of South Carolina, Louis D. Mowry, and others. } Bill for relief, &c.

To William L. Bradley, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the second Monday in October next, pursuant to a claim and allowance of appeal filed in the circuit court of the United States for the district of South Carolina, to show cause, if any there be, why the decree in the said appeal should not be corrected & speedy justice done in that behalf.

Witness the honorable George S. Bryan, one of the judges of the circuit court of the United States, the 27th day of June, in the year of our Lord one thousand eight hundred & seventy-nine.

GEO. S. BRYAN,
U. S. Judge D't S. C.

Entered in my office. Civil docket, folio 168.

R. M. WALLACE,
U. S. Marshal.

27th JUNE, '79.

U. S. MARSHAL OFFICE,
Charleston, S. C., July 2, 1879.

I hereby certify that, by my deputy J. B. Dill, I served a copy of the within citation on Wm. E. Earle, plaintiff's att'y, personally, at Greenville, S. C., on 30th June, 1879.

R. M. WALLACE.
U. S. Marshal.

Entry & service, 2.40; 273 miles at 6, 16.38—18.78.

(Indorsed:) United States circuit court, So. Ca. dist. In equity. William L. Bradley vs. The Marine & River Phosphate Mining & Manufacturing Company & others. Citation. Filed 27 June, 1879. J. E. Hagood, C. C. C. U. S., dist. S. C.

75 No. 29.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In the circuit court.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of the records, proceedings, and of the decree in the case of William L. Bradley, complainant, against The Marine and River Phospate Mining and Manufacturing Company of South Carolina, Lewis D. Mowry, and others, defendants, citizens of the State of South Carolina, rendered as aforesaid, together with all the proceedings had in the cause relating to the same.

Given under my hand and seal of the said court, at clerk's office in the city of Charleston and district of South Carolina, this the 2nd day of July, A. D. 1879.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. of S. C.

(Indorsement on cover:) No. 215. The Marine and River Phosphate Mining and Manufacturing Company et al., appellants, vs. William L. Bradley. S. Carolina C. C. U. S. Filed 14th July, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 215.

THE MARINE AND RIVER PHOSPHATE MINING AND MANUFACTURING COMPANY ET AL., APPELLANTS.

vs.

WILLIAM L. BRADLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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1 In the Supreme Court of the United States.

THE MARINE AND RIVER MINING AND MANUFACTURING COMPANY
vs.
WILLIAM L. BRADLEY.

No. . Oct. term, 1881.

It is hereby agreed between the parties that copies of the following-named papers, being parts of the record, be inserted in the transcript, and the clerk is requested to print them as a part of the transcript:

Testimony of C. C. Puffer, taken by commission.
Report of C. C. Puffer, receiver, as to payment of the bond.
Testimony of Reuben Tomlinson, taken by commission.
Testimony of Andrew J. Coe, taken by commission.
Testimony of William L. Bradley, taken by commission.
Testimony of D. T. Corbin, taken by commission.
Letter of D. T. Corbin to W. L. Bradley, June 4, 1877.
Letter of W. L. Bradley to D. T. Corbin, June 7, 1877.
Testimony of J. H. Ostendorff, clerk of the court of common pleas, Charleston County, and any other supplemental matter certified by the clerk, including Puffer's account.

WM. G. EARLE,
Sol. for Appellee.
A. G. MAGRATH,
For Appellant.

2 In the Supreme Court.

THE MARINE & RIVER PHOSPHATE MINING AND MANUFACTURING COMPANY, plaintiffs in error,
vs.
WILLIAM L. BRADLEY, DEF'T IN ERROR.

In the above case it is admitted that C. C. Puffer was, by the order of the common pleas court in the State of South Carolina, of the 30th June, 1875, discharged from his office as receiver, which was before the filing of the bill in this case; and that there was no order of the said court allowing or directing the said C. C. Puffer, as such receiver, to assign, transfer, or otherwise deal with the bond in this case, sometime referred to as a note. And we consent that the above and the testimony in this case in the office of the clerk of the United States circuit court for the district of South Carolina be printed and made
3 part of the record in this case.

A. G. MAGRATH,
Att'y for Appellant.

(Endorsed:)
I consent to the filing and printing of this paper as a part of the record.

WM. E. EARLE,
Sol. for Appellee.

In the Supreme Court. The Marine & River Phospate Mining & Manufacturing Company, pl'ff in error, vs. William L. Bradley, def'd't in error.

4 *Explanatory memoranda.*

The loan to Hardy Solomon of $47,500, in Schedule A, was made by my predecessor, and was merely a loan of $17,500 non-mortgage bonds of the South Carolina Railroad and $30,000 of the 8% Savannah & Charleston Railroad bonds. In the settlement of that loan the bonds were *were* simply returned to the bank with payment for use, the $17,500 being counted in Schedule A as a part of the above loan at par. The item of $8,000 in Schedule G represents the difference between the value as then fixed by the court and the actual market value as ascertained by sale under order of court.

The $30,000 of 8% Savannah & Charleston Railroad bonds mentioned above were really the property of James B. Campbell, held by the bank as collateral, and have been transferred to the account of collaterals in Schedules K and H. It was in consequence of this loan of Mr. James B. Campbell's collaterals that he was allowed a credit of $18,000 upon his note of $20,000, turning in the bonds @ 60 cents, on the ground
5 that being thus loaned they could not be sold under his instruction when they were at that price in the market.

The item in Schedule C of $30,000 of Marine & River P. M. & M. Company stock, valued at $20,000, was taken in payment of the same company's unsecured note by order of the court, after a payment of the interest in cash, upon a full statement of the company's condition and a letter from Geo. W. Williams, esq., with regard to the value and condition of the stock. The original loan was made by my predecessor and appears in Schedule A.

The item of $39,000 8% bonds of the Savannah & Charleston Railroad, appearing as assets in Schedule A, upon investigation was found to include $33,000 of collateral bonds held by the bank as security for J. Graham & J. B. Campbell, and is included in the schedule of collaterals K, and in the verification & connection of assets Schedule H.

The bills of the Bank of the State charged to me in Schedule A @ $41,964.44 being sold under order of court, the difference between that amount and $27,300—the amount received in cash—is included in Schedule G, and explains the item of $17,087.19 there found. These bills were sold under order of court @ 39ct.—a fair market value at the time—under the view that they were the property of the creditors to be converted into cash precisely the same as any other assets.

It will be observed that I was originally charged, as per Schedule A, with $807,103.12. I now account for them by the following items:

6 Schedule B, assets with Melton & Chamberlain, attorneys	$295,262 98
Schedule C, assets in my hands	" 341,383 32
Schedule D, commissions & expenses	" 49,200 30
Schedule E, attorneys' fees & necessary charges	" 2,051 06
Schedule F, interest accrued to June 1st, 1875	" 55,519 59
Schedule G, profit & loss as ascertained by sale by order of court	" 86,004 23
Making a total of	$829,421 48
This shows an increase of the assets to the amount of	$22,318 36

If now we deduct from Schedule A the amount of Schedule H which has been transferred to account of collaterals, Schedule K, 63,065.45, which amount was charged in Schedule A, and is not included in the above credits, it will swell the increase by that amount, as in all cases where

the assets have remained unchanged the values fixed in Schedule A have been retained.

If the final sale and collection of the assets do not realize that amount in cash it will be owing to the change and future depreciation in value or to the nominal character of the assets originally turned over to me.

Filed 22 June, 1875.

7 UNITED STATES OF AMERICA,
District of South Carolina, fourth circuit:

In circuit court. In equity.

WILLIAM L. BRADLEY, COMPLAINANT,
against
THE MARINE & RIVER PHOSPHATE MINING & Manufacturing Co. et al., defendants. } Bill for relief, &c.

On motion of Hon. A. G. Magrath, one of the defendants' solicitors, a reference in the above-stated case was called this 29th day of October, 1878, at 12 m. Mr. Magrath being confined to his bed, on motion of W. St. Julian Jervey, defendants' solicitor, the reference was adjourned until Tuesday evening, the 5th day of November, at one o'clock p. m.

Tuesday evening, 5th Nov., 1878, at the request of W. St. Julian Jervey, defendants' solicitor, *the* who said it would be impossible to get his witnesses before the referee on this day, it being general
8 election day, the reference was adjourned until Friday, one o'clock p. m.

Friday, November 8th 1878, one o'clock p. m. Present, Hon. A. G. Magrath, one of the defendants' solicitors, and Hon. James B. Campbell, complainant's solicitor. On motion of Hon. A. G. Magrath, defendants' solicitor, the reference was further continued until Saturday evening, 6 p. m.

Saturday evening, 6 p. m., Nov. 9th, 1878, reference met according to adjournment. Present, Hon. A. G. Magrath, Henry Buish, & W. St. Julian Jervey, defendants' solicitor, complainant's solicitor not being present.

JOHN H. OSTENDORFF, being sworn, says that he is the clerk of the court of common pleas and general sessions for Charleston County. The records of the said court are under my control. My attention has been oftentimes *been* called to the case of Dabney, Morgan & Co. against the president & directors of the Bank of the State. I have been re-
quested to make diligent search for an order of the court direct-
9 ing the transfer by C. C. Puffer, receiver, of a bond signed by D. T. Corbin, president of the Marine and River Phosphate Mining & Manufacturing Company of South Carolina, to W. J. Gayer, receives, for the sum of twenty thousand dollars. I have made diligent search for the order, and I cannot neither "find the original order" on file in my office nor no record of the same. Such orders are invariably recorded; the original orders should always be filed, and in this case there is no filing of the said order among the records. The records of the court will show that no such order was ever made.

GEORGE E. GIBBON, being sworn, says that he is bookkeeper of the

Marine and River Phosphate Mining and Manufacturing Company, of South Carolina. That the book marked Exhibit A is the stock-book of the company. That the stub*b* certificate marked No. 294 represents 300 shares of stock transferred by Hardy Solomons to receiver of the Bank of the State of South Carolina, on 23 April, 1875. Cer-
10 tificate stub*b* No. 295 represents 50 shares of stock transferred on same day by same party to C. C. Puffer.

Mr. Jervey, defendants' solicitor, put in evidence the report of C. C. Puffer, receiver of the Bank of the State, made to the court of common pleas for Charleston, June 1st, 1875, which is an explanatory report, which is as follows:

"The item in Schedule C of $30,000 of Marine & River P. M. & M. Company's stock, valued at $20,000, was taken in payment of the same company's unsecured note by order of the court, after a payment of the interest in cash, upon a full statement of the company's condition, and a letter from Geo. W. Williams, esq., with regard to the value and condition of the stock. The original loan was made by my predecessor and appears in Schedule A."

Reference was adjourned until Monday the 11th inst.

Monday, Nov. 11th, 1878, reference met, according to adjourn-
11 ment Present, Henry Buish, one of the defendants' solicitors, when the following testimony was introduced:

W. J. GAYER, being sworn, says:

The loan was made to the Marine River Mining and Manufacturing Company while I was receiver in the case of Dabney, Morgan & Co., vs. The President and Directors of the Bank of the State of South Carolina. The loan was ten thousand dollars, and made under the order of the court.

The company executed its bond for the loan, the bond being signed by D. T. Corbin as president, and secured by a mortgage of the assets of the company.

To my knowledge, no note was executed by the company for the loan.

WM. I. GAYER.

Sworn to and subscribed before me this the 11th day of November, 1878.

J. MAGOOD,
Special Master.

Defendants' solicitor consents that the complainant's solicitor may put in as evidence the accounts of C. C. Puffer, receiver, and his discharge.

12 Deposition of D. T. Corbin, taken at the city of New York, in the State of New York and southern district of New York, before Chester Wolverton, Louis F. Post, and John B. Parmis, commissioners, duly appointed to take the same under & by virtue of the annexed commission.

On this 27th day of June, A. D. 1878, at No. 243 Broadway, in the city of New York aforesaid, Chester Wolverton, Louis F. Post, and John B. Parmis, commissioners aforesaid, and D. T. Corbin, the witness in said commission mentioned, duly appearing, thereupon the said Louis F. Post duly administered unto the said Chester Wolverton and John

B. Parmis, and the said John B. Parmis duly administered unto the said Louis F. Post, the following oath, which was by each of them duly taken, to wit:

"You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses produced and examined by virtue of the commission hereunto
13 annexed, upon the interrogatories now produced and left with you. And you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed, and sworn to secresy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the circuit court of the United States. So help you God."

And thereupon the said D. T. CORBIN, the witness in said commission named, being by said Louis F. Post, one of said commissioners, in the presence of the others, first duly sworn that in the said cause of William L. Bradley, plaintiff, against The Marine and River Phosphate Mining and Manufacturing Company of South Carolina, and others, defendants, now pending in the circuit courts of the United States for the district of South Carolina, in equity, he would true answers make to all such interrogatories as should be propounded to him under and by
14 virtue of the aforesaid commission hereto annexed, testified and made oath as follows:

1. First interrogatory. What is your age, residence, and business?

Answer to first interrogatory. Am 44 years of age; my residence is temporarily in Washington, D. C., and my profession is attorney at law.

2. Second interrogatory. What was the consideration for the execution of the bond described in the first paragraph of the bill of complaint in this cause.

Answer to second interrogatory. I have the printed bill in this cause before me, and the consideration for the bond described in the first paragraph of the bill is $20,000. I negotiated the loan with William J. Gayer, receiver of the Bank of the State, as president of the Marine and River Phosphate Mining and Manufacturing Company of South Carolina; delivered the bond executed to him and received the loan for the company.

15 3. Third interrogatory. What was your relation to said company at the time of the execution of said bond?

Answer to third interrogatory. I was its president and a director.

4. Fourth interrogatory. What was your relation to the said company at the time of the execution of the endorsement upon said bond described in paragraph two of the bill of complaint?

Answer to the fourth interrogatory. I have the printed bill of complaint in this cause before me, and at the time of the execution by the company of the endorsement described in paragraph two of the bill I was president of the said company and also a director.

Fifth interrogatory. Did you sign said bond and said endorsement as president of the said company?

16 Answer to fifth interrogatory. I did for the company and in my official capacity as president.

Sixth interrogatory. Was said bond paid, or any part of it, at its maturity?

Answer to sixth interrogatory. It was not, except perhaps the interest.

Seventh interrogatory. Will you state what you know concerning the purchase of said bond by A. J. Coe and yourself of C. C. Puffer, receiver of the Bank of the State, and the transfer thereof to said Coe and yourself?

Answer to seventh interrogatory. The bond was past due and unpaid, and some time in March (I think), 1874, C. C. Puffer, receiver of the Bank of the State, notified me, as president of said Marine & River Phosphate Company, and I think, also, Mr. Tomlinson, the treasurer of said company, that the bond must be paid. The company
17 was not at the time in funds sufficient to pay the bond, as I was informed by the treasurer, and I inquired of Mr. Puffer whether he would sell and assign the bond if I would secure a purchaser. He replied that he would consult Judge Graham, who was then circuit judge of the Charleston circuit, and who had authority in the matter, and ascertain whether he would authorize the sale and transfer of the bond. Subsequently Mr. Puffer informed me that Judge Graham would authorize the transfer and sale of the bond at its face value, the interest being paid up to April 1, 1874. I then told Mr. Puffer that the company would pay the interest up to April 1, 1874, and that Mr. A. J. Coe, of Boston, Massachusetts, would give him $30,000 of stock in the Marine and River Phosphate Mining and Manufacturing Company of South Carolina, for said bond. Mr. Puffer replied that he would inquire into the value of the stock and consult with Judge Graham about it and give me an answer. He some time subsequently informed me that he had
18 made careful inquiry into the value of the stock; mentioned particularly George W. Williams' opinion of the value of the stock, and said that Judge Graham authorized him to accept the offer and make the sale and transfer of the bond. I then assigned 300 shares of my own stock in said company to said A. J. Coe, the par value thereof being $100 per share, and delivered the same to him. He transferred the said stock on the books of the company to himself and took out new certificates of stock in lieu of the old, and then endorsed his name upon the back of the new stock, signing the power of attorney to transfer in blank, and delivered the same to me to deliver to Mr. Puffer for said bond. I took the certificate of stock so endorsed by Mr. Coe and delivered the same to C. C. Puffer, receiver, and in consideration thereof he endorsed his name as receiver upon the back of said bond and delivered the same to me. I particularly inquired of Mr. Puffer then as to his authority to assign the said bond, and he informed me that he had Judge Graham's authority to do so. I subsequently and soon after informed said A. J. Coe
19 that the transaction had been completed; that the said stock had been delivered to C. C. Puffer, receiver, and that he had delivered the said bond to me. He replied "all right," that he was glad the transaction had been effected as the company could now get further time to pay the bond, and he added "the stock received from you purchased the bond and you may now consider the bond is yours," or words to that effect. I then said to him, in substance, "I will consider that the title to the bond passed first to you and then from you to me." The circumstances here recounted occurred in April, 1874, though it might have been as late as May following, when the bond was delivered by Mr. Puffer to me. When Mr. Puffer endorsed his name upon the bond and delivered it to me, the assignment was dated back to the time to

which interest had been paid by the company, which was also about the time that he first informed me that the bond could be purchased. The negotiations, I remember distinctly, ran through a month or six
20 weeks, more or less. Many conversations were had with Mr. Puffer about it, but I have given the substance of all that occurred.

Eighth interrogatory. Did or did not the Marine and River Phosphate Mining and Manufacturing Company of South Carolina own or have any interest in the stock with which the said bond was purchased by you and A. J. Coe?

Answer to eighth interrogatory. They had no interest whatever in said stock, directly or indirectly. Every share of it was my own private property before the assignment to Mr. A. J. Coe.

Ninth interrogatory. Will you explain how the Marine and River Phosphate Mining and Manufacturing Company of South Carolina came to make the endorsement upon said bond set out in paragraph two of the bill of complaint?

Answer to ninth interrogatory. I have the printed bill before
21 me in this cause in which said endorsement is set out. The endorsement itself recites the consideration thereof. The action of the directors in connection with that endorsement I recollect substantially. After I came into possession of the bond as before described I had no objection to giving the company further time in which to pay it. In fact the bond was purchased for this purpose. At a meeting of the board of directors I informed them that this bond formerly held by C. C. Puffer, receiver, had passed into the hands of another party (I am not certain whether I told them I was the owner of it or not at that time), and he would give the company an extension of the time for payment, if the company would pay the current bank rates of interest and put said endorsement above described upon the bond. The matter was fully discussed by the members of the board, and unanimously agreed to, and a resolution setting out the endorsement to be made on the bond and directing it to be made was adopted. I cannot state
22 positively whether I mentioned that said bond was then owned by me or not, but I am very sure that the fact was well known to most, if not all, the board of directors, because I am very sure that one of them at least talked with me about it immediately after the adjournment. I think that director was Mr. George W. Clark. The treasurer of the company, Mr. Reuben Tomlinson, knew, in fact he had been aware, of the negotiations to purchase the bond before the purchase was effected. I had told him about it and he took a very lively interest in the matter, as he said the company could not without embarrassment pay the bond then. The bond was subsequently to the action of the board of directors above described presented by me to the treasurer of the company, Reuben Tomlinson, and he wrote or caused to be written upon the bond the indorsement as directed in the resolution of the board of directors, and as set out in paragraph 2 in
23 the bill of complaint in this cause. He signed said indorsement as treasurer, and I signed it as president, and he affixed the seal of the company.

Tenth interrogatory. Did you thenceforward hold the bond and collect the interest as it fell due upon it?

Answer to tenth interrogatory. I did; from April 1st, 1874, to Jan. 1st, 1877, I collected the interest quarterly.

Eleventh interrogatory. Was there ever any question made by the company during that period of your right to do so?

Answer to eleventh interrogatory. None, to my knowledge.

Twelfth interrogatory. Was any payment made to you of the principal of said bond?

Ans. to twelfth interrogatory. Yes; ten thousand dollars, in December, 1876, was paid me on said bond by the company, and the payment endorsed upon the bond.

Thirteenth interrogatory. When did the company first refuse
24 to pay said bond or the interest on it?

Ans. to thirteenth interrogatory. April, 1877.

Fourteenth interrogatory. When did you part with the bond, and to whom?

Ans. to fourteenth interrogatory. I sold and delivered the bond to William L. Bradley, of Boston, Mass.—rather, I delivered said bond by his order to his attorney, William Stone, and I have never seen it since.

By unanimous consent of the commissioners the further taking of testimony under the annexed commission was at this point adjourned to Saturday, June 29, 1878, at 10 o'clock in the forenoon.

Examination resumed on the 29th day of June, A. D. 1878, at 10 o'clock a. m., being present, Chester Wolverton, Louis F. Post, and John B. Parmer, commissioners.

25 Cross-interrogatories:

First interrogatory. If, in answer to the fourteenth interrogatory, you reply in the affirmative, that you did part with the bond referred to, and if you further answer to whom you parted with the said bond, state further when you did so part with the said bond; what consideration you received for parting with the said bond; of what did that consideration consist; was it all in money or part in money, and, if part in money, what else constituted the consideration; what led you to part with the said bond? Is the plaintiff in this suit the party to whom you parted with said bond; did you apply to him to allow you to consent to part with the said bond to him, or did he apply to you to become the holder of the said bond? Where was he when the negotiations began for the said bond; if he was absent from the city of Charleston where was he? Did you have correspondence with him relating to the bond? If so, annex the letters passing
26 between you. If there was no correspondence did you employ an agent; if so, who was that agent?

Answer to first cross-interrogatory. I parted with said bond by delivering it to William Stone, attorney & counselor of William L. Bradley, the plaintiff in this cause, about the 7th day of June, 1877, in pursuance to the order of the plaintiff in this cause. I received promise of payment, face value of the bond less the costs & expenses of collection; the terms upon which the sale was made are expressed in correspon'ce with William L. Bradley, the plaintiff in this cause, which I hereto attach as part of my answer to this question, and which consist of a copy of my letter, press copy, dated Charleston, S. C., June 4th, 1877, addressed to William L. Bradley, and mailed to him by me, and produced and marked Exhibit A, C. Wolverton, commissioner; and a letter in reply from William L. Bradley, dated office William L. Bradley, 27
Kilby street, Boston, June 7th, 1877, received by me; same is
27 produced and marked Exhibit B, C. Wolverton, commissioner.

Also a telegram from William L. Bradley, dated Boston, June 7th, 1877, addressed to me, and received by me at Charleston, S. C.,

June 28th, 1877; same produced and marked Exhibit C, C. Wolverton, commissioner.

I received ten dollars by check of William L. Bradley, which was subsequently paid in pursuance of the terms of sale expressed in the correspondence above produced. There are no other terms of sale, or no other consideration except as expressed in the correspondence. I have received no other money but the ten dollars. In reply to the question, What led you to part with the said bond? I consider the question impertenent, but nevertheless will answer it—that the company had refused to pay the bond, and I believed if I held the bond I would be compelled to litigate the same with the company, and I believed if it passed into the hands of a third person in good faith that the com-
28 pany would pay it to him without a long and tedious litigation, having no prejudices against him, as I believed; and, further, I did not wish to be a party plaintiff in an important suit against the company that I been so long connected with as president. The plaintiff in this suit is the party to whom I parted with said bond.

Answer to the question, Did you apply to him to allow you to consent to part with the said bond to him, or did he apply to you to become the holder of the said bond? I did apply in the manner expressed in my letter of June 4th, 1877, hereunto annexed, and marked Exhibit A, C. Wolverton, commissioner. He was in Boston when the negotiation begun. I have annexed all the correspondence, and I had no agent.

Second cross-interrogatory. At the time when the money was borrowed for which the bond was given, state who made the application for the loan; how was it made, and were there any other terms or
29 conditions than such as are set forth in the bond; who were at that time the officers of the defendant company; what was the security for the loan; was the property of the defendant company security for it; was there any personal responsibility? If so, who were personally responsible for the repayment of the loan; were you in any manner personally responsible; was A. J. Coe in any manner personally responsible; was the plaintiff in this suit in any manner personally responsible for the repayment of the loan, or any part of it?

Answer to second cross-interrogatory. I made the application for the loan as president of the company defendant at the time the money was borrowed for which the bond was given. It was a verbal personal application to W. J. Gayer, receiver. There were no other terms or conditions except such as are set forth in the bond. The officers of the defendant company at that time were myself president, and the directors were myself, Mr. Robertson—of the firm of Geo. W. Williams & Co., Alexander Isaacs, George W. Clark, and J. P. Low. I may be
30 mistaken as to one or two directors for that year, but the records of the company will show. Reuben Tomlinson was treasurer, and C. C. Coe was superintendent, and B. C. Hard was secretary; these were the officers as I remember them now.

There was no other security except that which is expressed in the last clause of the bond. The property of the defendant company was security for it as expressed in the bond. There was no personal responsibility assumed by any one for the repayment of the loan; neither I, or A. J. Coe, or the plaintiff in this suit were in any way responsible for the repayment of the loan or any part of it, unless there was a legal responsibility growing out of our relations to the company as officers and stockholders.

Third cross-interrogatory. What official relation did you have to the defendant company at the time of the alleged transfer of the bond to

you? At the same period of time what official relation did A. J. Coe and the plaintiff in this suit have to the defendant company?

31 Answer to third cross-interrogatory. I was president of the company at that time. A. J. Coe and the plaintiff in this suit had no official relation to the company at that time that I remember of; I think they were stockholders.

Fourth cross-interrogatory. At the time when you became the owner, as you claim to be, of this bond, were you or not the president of the company? Did you ever report to the directors of the company that you were the owner of this bond? Did you inform them what you had given for the bond? Did you cause mention to be made in the minutes of the company of your transactions in regard to this bond?

Answer to fourth cross-interrogatory. I was the president of the company at the time I became the owner of this bond as before stated. I am not certain that I made any final report to the directors of the company that I was the owner of this bond, but I mentioned the matter casually to different directors at the time, or subsequent thereto, of the purchase. Those to whom I mentioned it I stated what I

32 had given for the bond. The purchase and ownership of this bond by me and the terms of purchase was never any secret. I mentioned the matter freely to all the officers of the company whenever the matter was spoken of. I did not cause mention to be made in the minutes of the company of my transactions in regard to this bond. I considered it a private transaction in which the company had no pecuniary interest.

Fifth cross-interrogatory. If you say that any payments were or have been made to you on account of the said bond, state out of what fund such payments were made. Who furnished that fund; for what consideration? Who was the president of the defendant company when such payments were made, and by whose order were they made to you, and how much has been so paid?

Answer to fifth cross-interrogatory. I presume that the payments were made out of the general fund of the company. I was at Columbia, S. C., at the time the sum of ten thousand dollars was paid

33 me upon said bond by the treasurer of the company, Mr. Tomlinson; he paid me that sum pursuant to a written request from me to do so. I knew of no special fund in possession of the company, and never heard of any so set apart. The funds of the company were received and held in custody, and paid out by the treasurer on his own responsibility, under the laws and rules of the company.

I had no power over him any more than any other director. I have no means of knowing who furnished the fund or from what source it came, except that I suppose it came from the current business transactions of the company. I suppose the consideration was from the sale of phosphate rock made by the treasurer.

I was president of the company when the payment was made. I do not know by whose order it was made, except that it was made by the treasurer at my request, as above stated, the bond being past due. I suppose he paid it as he paid other obligations of the company, as my request did not amount to an order, as I had no authority to

34 order that payment or any other.

Ten thousand dollars was paid me on account, and the interest up to Jan. 1st, 1877, as it fell due.

I do not know by whose order the payments were made, but, as above stated, suppose that the treasurer made them upon his own responsibility, as he had a right to do.

Sixth cross-interrogatory. If A. J. Coe purchased the bond from the receiver, C. C. Puffer, did you know of the transaction when it took place? Did you consult or advise with either or both of the parties? What was A. J. Coe to give C. C. Puffer? In what was he to pay for the bond? Did he pay for it? If in the stock of the defendant company, did he get from you the stock to pay for it? Was this the stock that you transferred to A. J. Coe that he transferred to Hardy Solomon, and three hundred shares of which Hardy Solomon transferred to C. C. Puffer, receiver, on the sixth March, 1877, eleven months after the alleged transfer to A. J. Coe?

35 Answer sixth cross-interrogatory. I did know of the purchase of the bond of C. C. Puffer, receiver, at the time it took place. I did have conversations in reference to the matter with both parties. A. J. Coe was to give C. C. Puffer three hundred shares of stock in the defendant company. And he did pay for it in that way. And he got the stock from me to pay for it. As to the last clause in the interrogatory several facts are assumed that are not true. A. J. Coe transferred no stock to Hardy Solomon within my knowledge, and I have no knowledge of any transfer of stock by Hardy Solomon to C. C. Puffer, receiver, at any time. If such a transfer ever was made on the books of the company, I had no knowledge of the identity of the stock; the stock delivered to C. C. Puffer in consideration of this bond I delivered myself personally, in the name of Mr. A. J. Coe. What became of this identical stock I have no knowledge. If it was transferred to Hardy Solomon at all it must have been done after it was delivered to C. C. Puffer, re-

36 ceiver, and not before. It was quite common with parties dealing in the stock of this company to sign the power of transfer upon the back of the stock in blank, rather leaving the name of the transferee blank, and then pass the stock by delivery from hand to hand without further endorsement; the stock thus assigned in blank might pass thro' the hands of a dozen holders before it would be presented to the company for transfer upon the books.

Seventh cross-interrogatory. State if any of the board of directors or any one of the stockholders of the defendant company, save yourself and A. J. Coe, knew of the fact that the consideration because of which the said bond was claimed to be a charge upon the defendant company was three hundred shares of the company. Were they not led to believe that twenty thousand dollars in money had been paid to the receiver? Were not you and A. J. Coe severally responsible to the receiver

37 as a creditor of the defendant corporation for unpaid capital in an amount equal to or greater than the amount of the said bond?

Answer to seventh interrogatory. I think some of the directors knew at the time, or very shortly after the purchase of the bond, that it had been purchased with three hundred shares of stock in the company. I suppose this is what the involved interrogatory has reference to. I am not certain whether the exact amount of stock used to pay for the bond was known, but it was known that stock was used. I never led anybody to believe that twenty thousand dollars had been paid in money, and never said so, although I would have been justified in doing so, for the stock and assessments upon it had cost me more than that. Mr. A. J. Coe and myself were not responsible to the receiver as a creditor of the defendant corporation for unpaid capital in an amount equal to or greater than the amount of said bond.

38 I can't say about the responsibility of Mr. Coe to the company for unpaid capital, because I don't know how much stock he held—in fact, I don't know that he held any at that time. The full amount of

the stock held by me was not at that time paid up, and it was subject to further assessment by the company, but there were no unpaid assessments at that time.

The witness desires to state further that he sees his name upon the printed bill as an attorney in this cause; that his name so appears without authority; that Mr. William Stone was Mr. Bradley's attorney in the matter, and witness was not.

D. T. CORBIN.

Taken before Chester Wolverton, Louis F. Post, and John B. Parmer, on the 27 and 29 days of June, 1878, no person being present except the witness and the aforesaid commissioners; and read over and subscribed and sworn to before said commissioners on the said 29th day of June, 1878.

Attest:

CHESTER WOLVERTON. [SEAL.]
L. F. POST. [SEAL.]
JOHN B. PARMER, *Com'r.* [SEAL.]

39 *Commission to examine witness.*

THE UNITED STATES OF AMERICA,
South Carolina District:

The President of the United States of America to Chester Wolverton, No. 243 Broadway, N. Y.; Louis F. Post, No. 145 Broadway, N. Y.; and John B. Parmes, No. 64 Broadway, N. Y., greeting:

Whereas a certain cause is now depending in the circuit court of the United States for the fourth circuit in the district of South Carolina, between William L. Bradley, complainant, and the Marine and River Phospate Mining and Manufacturing Company and others, defendants, and it being necessary to the investigation of the said cause, that certain persons resident in New York, D. T. Corbin, should be examined on certain interrogatories: Now, know ye, that in confidence of your prudence, ability, and integrity, you are appointed, and by these presents full power and authority are given to you, or any two or more of you, to examine all witnesses whatsoever, as well on the part of the said complainant as on the part of the said defendants, or either of them, upon interrogatories; and therefore you, or any two or more of you, are hereby authorized and required, on certain days and at certain places to be appointed by you for that purpose, to cause such witnesses to come before you, and then and there to examine each of them apart, on the said interrogatories, on their respective corporal oaths first taken before you, or any two or more of you, and to reduce their depositions to writing, and return this writ to the clerk of the said court at Charleston, in the State of South Carolina, under your seals, with the said interrogatories and depositions annexed; and you, and every of you, are hereby further required, that before you proceed to swear and examine any witness, you severally take the oath, first specified in the schedule hereunto annexed; and any one of you is hereby authorized and empowered to administer such oath to the other or others of you. And you are hereby further authorized and required, jointly or separately, to administer the oath last specified in the said schedule hereunto annexed, to any clerk employed in taking the deposition of witnesses aforesaid, before such clerk is permitted to act or be present at such examination.

Witness the honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the 31st day of May, in the year of our Lord one thousand eight hundred and seventy-eight, and in the 102' year of the sovereignty and Independence of the United States of America.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

40 *Commissioner's oath.*

You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness or witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed and sworn to secresy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the circuit court of the United States; so held you God.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe, and engross the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of them named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners or any of them, to take and write down and engross the said depositions or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses, or any of them, to be taken or written down, transcribed, or engrossed by you, or whereto you shall have recourse or be any ways privy, until publication shall pass by rule or order of the circuit court of the United States; so help you God.

Instructions for the commissioners.

The commissioners are requested, in the first place, to observe carefully the directions contained in the body of the commission. Any two of them will be sufficient to take the examination. Notice is to be given to the commissioners on the other side of the time and place of examination, and if they do not attend, the examination may proceed in their absence.

When the examination of the witness is completed, his depositions are to be signed by him and attested by the commissioners.

When the examination of all the witnesses is closed, the interrogatories and depositions are to be annexed to the commission, and the whole enclosed in a large paper under seal. The commissioners will endorse on one corner of the outside of it the name of the cause, and seal the packet with their seals, and write their names across the seals, and direct it to the clerk or register by whom the commission is signed.

If the commission is returned by post, one of the commissioners will sign a memorandum on the outside to certify that the enclosed was lodged by him in the post-office.

41 UNITED STATES OF AMERICA,
District of South Carolina:

In the circuit court. In equity.

W. L. BRADLEY, PLAINTIFF,
vs.
THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company and others, defendants.

Cross-interrogatories for D. T. Corbin.

1. If in answer to the 14th interrogatory you reply in the affirmative, that you did part with the bond referred to; and if you further answer to whom you parted with the said bond, state further when you did so part with the said bond; what consideration you received for parting with the said bond. Of what did that consideration consist; was it all in money or part in money; and if part in money, what else constituted the consideration; what led you to part with the said bond; is the plaintiff in this suit the party to whom you parted with the said bond; did you apply to him to allow you to consent to part with the said bond to him, or did he apply to you to become the holder
42 of the said bond; where was he when the negotiations began for the said bond; if he was absent from the city of Charleston, where was he; did you have correspondence with him relating to the bond; if so, annex the letters passing between you; if there was no correspondence, did you employ an agent; if so, who was that agent?

2. At the time when the money was borrowed for which the bond was given, state who made the application for the loan. How was it made; and were there any other terms or conditions than such as are set forth in the bond; who were at that time the officers of the defendant company; what was the security for the loan; was the property of the defendant company security for it; was there any personal responsibility; if so, who were personally responsible for the repayment of the loan? Were you in any manner personally responsible? Was A. J. Coe in any manner personally responsible? Was the
43 plaintiff in this suit in any manner personally responsible for the repayment of the loan or any part of it?

3. What official relation did you have to the defendant company at the time of the alleged transfer of the bond to you? At the same period of time what official relation did A. J. Coe and the plaintiff in this suit have to the defendant company?

4. At the time when you became the owner, as you claim to be, of this bond, were you or not the president of the company? Did you ever report to the directors of the company that you were the owner of this bond? Did you inform them what you had given for the bond? Did you cause mention to be made in the minutes of the company of your transactions in regard to this bond?

5. If you say that any payments were or have been made to you on account of the said bond, state out of what fund such payments were made. Who furnished that fund? For what consideration?

44 Who was the president of the defendant company when such payments were made; and by whose order were they made to you; and how much has been so paid?

6. If A. J. Coe purchased the bond from the receiver C. C. Puffer, did you know of the transaction when it took place? Did you consult or advise with either or both of the parties? What was A. J. Coe to give C. C. Puffer? In what was he to pay for the bond? Did he pay for it? If in the stock of the defendant company, did he get from you the stock to pay for it? Was this the stock that you transferred to A. J. Coe, that he transferred to Hardy Solomon; and three hundred shares of which Hardy Solomon transferred to C. C. Puffer, receiver, on the 6th March, 1877, eleven months after the alleged transfer to A. J. Coe?

7. State if any one of the board of directors, or any one of the stockholders of the defendant company, save yourself and A. J. Coe, knew of the fact, that the consideration because of which the said bond
45 was claimed to be a charge upon the defendant company was three hundred shares of the company? Were they not led to believe that twenty thousand dollars in money had been paid to the receiver? Were not you and A. J. Coe severally responsible to the receiver, as a creditor of the defendant corporation, for unpaid capital in an amount equal to or greater than the amount of the said bond?

W. ST. JULIAN JERVEY,
Solicitor for M. & R. Ph. M. & M. Co. & others, Dff'd'ts.
A. G. MAGRUTH,
BUIST & BUIST,
Solicitors of George W. Williams & Co.

Filed 30th May, 1878. J. E. Hagood, C. C. C. U. S., dist. S. C.

46 (Original.)

UNITED STATES OF AMERICA,
District of South Carolina:

Circuit court of the United States, fourth circuit. In equity.

WILLIAM L. BRADLEY, PLAINTIFF,
against
(1.) THE MARINE AND RIVER PHOSPHATE MINing and Manufacturing Company, of South Carolina. (2.) Louis D. Mowry, Francis J. Pelzer, Francis S. Rogers, Wesley G. Muchinfuss & Thomas S. Inglesby, partners under style of (3.) Pelzer, Rodgers & Co., George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor, Robert E. Cathcart, partners under the style of (4.) George W. Williams & Co., defendants.

Interrogatories to be propounded to D. T. Corbin, a witness
47 examined on behalf of the plaintiff in the above-entitled cause.

Ques. 1. What is your age, residence, and business?

2. What was the consideration for the execution of the bond described in the first paragraph of the bill of complaint in this cause?

3. What was your relation to the said company at the time of the execution of said bond?

4. What was your relation to the said company at the time of the execution of the endorsement upon said bond described in paragraph two of the bill of complaint?

5. Did you sign said bond and said endorsement as president of the said company?

6. Was said bond paid, or any part of it, at its maturity?

7. Will you state what you know concerning the purchase of said bond by A. J. Coe and yourself of C. C. Puffer, receiver of the Bank of the State, and the transfer thereof to said Coe and yourself.

48 8. Did or did not the Marine and River Phosphate Mining and Manufacturing Company of South Carolina own or have any interest in the stock with which the said bond was purchased by you and A. J. Coe?

Ques. 9. Will you explain how the Marine and River Phosphate Mining and Manufacturing Company of South Carolina came to make the endorsement upon said bond set out in paragraph two of the bill of complaint?

10. Did you thenceforward hold the bond and collect the interest as it fell due upon it?

11. Was there ever any question made by the company during that period of your right to do so?

12. Was any payment made to you of the principal of said bond?

13. When did the company first refuse to pay said bond or the interest on it?

14. When did you part with the bond, and to whom?

EARLE & WELLS,
Plaintiff's Attorneys.

J. B. CAMPBELL,
Of Counsel.

49 We accept service of a copy of the within direct interrogatory.

May 18, 1878.

BUIST & BUIST,
Att'ys of Williams & Co.
A. G. MAGRATH,
W. ST. JULIAN JERVEY,
Sol'r.

MAY 20, '78.

Filed 18 May, 1878. J. E. Hagood, C. C. C. U. S., dist. S. C.

50 EXHIBIT A.—C. WOLVERTON, *Commissioner.*

CHARLESTON, S. C., *June* 4, 1877.

WM. L. BRADLEY, Esq., *Boston, Mass.:*

DEAR SIR: I desire to sell to you a bond which I hold against the Marine & River Phosphate Mining & Manufacturing Company of S. C. This bond was originally given for money borrowed by the co. from W. J. Gayer, receiver of the Bank of the State. The original amount of the bond was twenty thousand dollars, upon which ten thousand dollars has been paid, and the interest also paid to the first day of January last. The interest is payable quarterly and at the rate of twelve per cent. per annum. I value the bond at the amount still due on the

face of it, and wish you to pay me that amount for it; but I will
51 require you to pay me for the same, except as below, only when you shall have collected the amount from the company, and what you shall collect from the company, less the cost and expenses of collection. The bond is now past due, but it was purchased by me three years ago and before the extension got by the company expired. I wish you to pay me ten dollars down on account of purchase-money.

Very truly, yours,

D. T. CORBIN.

EXHIBIT B.—C. WOLVERTON, *Commissioner*.

OFFICE OF WILLIAM L. BRADLEY,
27 *Kilby street, Boston, June* 7, 1877.

D. T. CORBIN, Esq.:

DEAR SIR: Yours of the 4th inst. is at hand and contents
52 noted; in answer to which I have sent you the following telegram: "I accept bond on terms you offer. Have Stone bring suit immediately. Have sent purchase-money to-day."

You will please find enclosed check for ten dollars ($10), for which you will please hand to my attorney, Mr. Stone, a receipt.

Yours, very truly,

WM. L. BRADLEY,
Per ROB'T L. BRADLEY.

EXHIBIT C.—C. WOLVERTON, *Commissioner*.

HALF-RATE MESSAGES.

The Western Union Telegraph Company require that all messages received for transmission shall be written on the blanks of the company, under and subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following half-rate message:

GEO. H. MUMFORD, *Sec'y.* [25 N. Y.] WILLIAM ORTON, *Pres't.*

53 Dated Boston 7 June, 1877.
Received at 7 " 8. 16 p.

To D. T. CORBIN:

I accept bond on terms you offer. Have Stone bring suit immediately. Have sent purchase money to-day.

WM. L. BRADLEY.

17 p'd H. R. S'g'h.

54 Deposition of C. C. Puffer, taken at the city of New York, in the State of New York, and southern district of New York, before Chester Wolverton, Louis F. Post, and John B. Parmes, commissioners duly appointed to take the same under and by virtue of the annexed commission.

On this 27th day of June, A. D. 1878, at No. 243 Broadway, in the city of New York aforesaid, Chester Wolverton, Louis F. Post, and John B. Parmes, commissioners aforesaid, and C. C. Puffer, the witness in said commission mentioned, duly appearing thereupon the said Louis

F. Post duly administered unto the said Chester Wolverton and John B. Parmes, and the said John B. Parmes duly administered unto the said Louis F. Post, the following oath, which was by each of them duly taken, to wit:

"You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and wit-
55 nesses produced and examined by virtue of the commission hereunto annexed upon the interrogatories now produced and left with you. And you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed and sworn to secresy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or of any of them, to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission until publication shall pass by rule or order of the circuit court of the United States—so help you God

And thereupon the said C. C. PUFFER, the witness in said commission named, being by said Louis F. Post, one of said commissioners, in the presence of the others, first duly sworn that in the said cause of William L. Bradley, plaintiff, against The Marine and River Phosphate Mining and Manufacturing Company, of South Carolina, and
56 other defendants, now pending in the circuit court of the United States for the district of South Carolina, in equity, he would true answers make to all such interrogatories as should be propounded to him under and by virtue of the aforesaid commission hereunto annexed, testified and made oath as follows:

1. First interrogatory. What is your age, residence, and business?

Answer to first interrogatory. I am 37 years old; I reside in Brooklyn, Kings County, New York; and am engaged in the business of fire insurance.

2. Second interrogatory. Please state whether you are the C. C. Puffer who was appointed receiver of the Bank of South Carolina, at Charleston, S. C., by Judge R. F. Graham; if so, when you were appointed. How long did you act in said receivership, and when did you finally retire from the same?

57 Answer to second interrogatory. I am; I was appointed in February, 1874; can't remember exact date; acted about two years and retired in the winter or spring of 1876; I think in March.

3. Third interrogatory. Please state whether among the assets of said bank turned over to you as receiver was the bond for twenty thousand dollars executed by the Marine and River Phosphate Mining and Manufacturing Company, of South Carolina, described in the first paragraph of the bill of complaint in this cause.

Answer to third interrogatory. Yes.

4. Fourth interrogatory. If you say said bond was among said assets turned over to you, will you please state what disposition you made of it? If you sold, assigned, and delivered said bond to anybody, when, to whom, and for what, and how much did you receive in consideration therefor?

58 Answer to fourth interrogatory. I issued notice to the Marine & River Phosphate Company to pay the bond. Mr. Corbin came to me in behalf of Mr. Coe, of Boston, and stated that the company was unable to pay the bond at that time, and that Mr. Coe would like to buy it; that Mr. Coe would pay $30,000 of the stock of the company for the bond. I told him I would consult with Judge Graham and do

as he ordered in the matter. Judge Graham instructed me to find out from George W. Williams what the value of the stock was. I did so, and got a letter from George W. Williams stating the value of the stock, and presented it to Judge Graham, who ordered me to exchange the bond for the stock, provided the interest upon the bond was paid to date. I thereupon received from Mr. Coe, through Mr. Corbin, $30,000 of the stock of the company and the interest upon the bond to April 1, 1874, which was the date of the transaction, to my best
59 recollection, and I transferred the bond in blank by written assignment on the back, and delivered it to Major Corbin.

5. Fifth interrogatory. By what authority did you sell, assign, and deliver said bond, and where is the evidence of said authority?

Answer to fifth interrogatory. By authority of Judge Graham. The evidence of that authority is among the papers that I turned over to my successor. If not there, it is lost. I turned it over to him, I am confident. It is not among any of my papers. There should be among those papers a written order of Judge Graham, a written approval of my acts by Judge Graham, in which that transaction is stated, and a final approval of my acts at the time of my discharge.

6. Sixth interrogatory. Did you enter said transaction, the sale and transfer of said bond, in your final account as receiver; and did
60 the consideration received for said bond go into and become a part of the assets of said bank of the State?

Answer to sixth interrogatory. I answer yes, to the whole interrogatory. I can't say whether I entered it in detail, as I have stated it here, but probably in ordinary book-keeping form. I may have appended some explanatory note, but am not certain.

7. Seventh interrogatory. Were your accounts as receiver of said bank approved by the court of common p'eas for Charleston County, South Carolina, and you duly and finally discharged as such receiver and your bond cancelled?

Answer to seventh interrogatory. Yes; my accounts were approved by said court of common pleas; I was duly and finally discharged as such receiver, and my bond was returned to me. Judge Magrath drew the order of discharge, which was signed by Judge Reed.

61 8. Eighth interrogatory. Please state any other fact not already stated that you may know of interest or advantage to the plaintiff.

Answer to eighth interrogatory. Perhaps I ought to explain that in keeping my accounts I entered them in ordinary book-keepers' form, and I may possibly have entered under the word "paid" or after that word the transaction referred to; but that is merely the technical book-keepers' form, and I should have entered it the same whether it had been paid by the company, exchanged for other securities of the company, or sold to a third party.

The foregoing deposition taken and reduced to writing wholly by Louis F. Post, one of said commissioners, and in the presence of the others and of the witness, no other person being present and after being read over to the witness, in the presence of all said commissioners, he hereunto subscribes his name.

C. C. PUFFER.

Attest:

LOUIS F. POST. [L. F. P.]
JOHN B. PARMES. [J. B. P.]
CHESTER WOLVERTON. [SEAL.]

62 UNITED STATES OF AMERICA,
District of South Carolina:

In the circuit court. In equity.

W. L. BRADLEY, PLAINTIFF,
vs.
THE MARINE & RIVER PHOSPHATE MINING and Manufacturing Co. et al., def'd'ts.

The defendants except to the 2, 3, 4, 5, 6, 7, & 8 interrogatories propounded for C. C. Puffer, a witness to be produced, sworn, and examined on the part of the plaintiff, and object to the answers of the witness to the said interrogatories, because the several matters and things inquired of in the said interrogatories are such the highest evidence of which, if it exists at all, only does so in the records of the court in which the said several matters and things were transacted or took place, and if such matters and things, all of which are matters of record if they were transacted or took place, the records of the court only can be introduced to prove the same.

W. ST. JULIAN JERVEY,
Solicitor for M. & R. Ph. M. & M. Co. & o's, Def'ts.
A. G. MAGRATH,
BUIST & BUIST,
Solicitors of George W. Williams & Co.

Filed 30 May, 1878. J. E. Hagood, C. C. C. U. S., dis't S. C.

63 *Commission to examine witness.*

THE UNITED STATES OF AMERICA,
South Carolina District:

The President of the United States of America to Chester Wolverton, 243 Broadway, N. Y.; Louis F. Post, 145 Broadway, N. Y.; & John B. Parmes, 64 Broadway, N. Y., greeting:

Whereas a certain cause is now depending in the circuit court of the United States for the fourth circuit, in the district of South Carolina, between William L. Bradley, complainant, and the Marine and River Phosphate Mining and Manufacturing Company and others defendants; and it being necessary to the investigation of the said cause that certain persons resident in New York, C. C. Puffer, should be examined on certain interrogatories: Now know ye that in confidence of your prudence, ability, and integrity you are appointed, and by these presents full power and authority are given to you, or any two or more of you, to examine all witnesses whatsoever, as well on the part of the said complainant as on the part of the said defendants, or either of them, upon interrogatories; and therefore you, or any two or more of you, are hereby authorized and required, on certain days, and at certain places, to be appointed by you for that purpose, to cause such witnesses to come before you, and then and there to examine each of them apart on the said interrogatories, on their respective corporal oaths first taken, before you, or any two or more of you, and to reduce their depositions to writing, and return this writ to the clerk of the said court, at Charleston, in the State of South Carolina, under your seals, with the said interrogatories and depositions annexed; and you, and every of you, are hereby further required that before you proceed to

swear and examine any witness you severally take the oath first specified in the schedule hereunto annexed, and any one of you is hereby authorized and empowered to administer such oath to the other or others of you; and you are hereby further authorized and required, jointly or separately, to administer the oath last specified in the said schedule hereunto annexed to any clerk employed in taking the deposition of witnesses aforesaid, before such clerk is permitted to act or be present at such examination.

Witness the honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the 31 day of May, in the year of our Lord one thousand eight hundred and seventy-eight, and in the 102 year of the sovereignty and Independence of the United States of America.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S., Dis't S. C.

64 *Commissioner's oath.*

You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed, and sworn to secresy in the execution of this commission, the contents of all, or any, of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the circuit court of the United States. So help you God.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, and write down, transcribe, and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them, to take, and write down, and engross the said depositions, or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses, or any of them, to be taken or written down, transcribed, or engrossed by you, or whereto you shall have recourse, or be any ways privy, until publication shall pass by rule or order of the circuit court of the United States. So help you God.

Instructions for the commissioners.

The commissioners are requested, in the first place, to observe carefully the directions contained in the body of the commission. Any two of them will be sufficient to take the examination. Notice is to be given to the commissioners on the other side of the time and place of examination, and if they do not attend the examination may proceed in their absence.

When the examination of the witness is completed, his depositions are to be signed by him and attested by the commissioners.

When the examination of all the witnesses is closed, the interrogatories and depositions are to be annexed to the commission, and the whole enclosed in a large paper, under seal. The commissioners will endorse on one corner of the outside of it the name of the cause, and seal the packet with their seals, and write their names across the seals, and direct it to the clerk or register by whom the commission is signed.

If the commission is returned by post, one of the commissioners will sign a memorandum on the outside to certify that the enclosed was lodged by him in the post-office.

65 United States of America, district of South Carolina, circuit court of the United States, fourth circuit. In equity:

WILLIAM L. BRADLEY, plaintiff,
against
(1.) THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company of South Carolina; (2.) Lewis D. Mowry, Francis J. Pelzer, Francis S. Rogers, Wesley G. Muckinfuss, Thomas S. Inglesby, partners, under style of (3,) Pelzer, Rogers, & Co., George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor, and, Robert E. Cathcart, partners under the style (4,) George W. Williams & Co., defendants.

66 Interrogatories to be propounded to C. C. Puffer, of the city and county of New York, as a witness examined on behalf of the plaintiff in the above-entitled cause.

Ques. 1. What is your age, residence, and business?

Ques. 2. Please state whether you are the C. C. Puffer who was appointed receiver of the Bank of the State of South Carolina, at Charleston, South Carolina, by Judge R. F. Graham: if so, when were you appointed, how long did you act in said receivership, and when did you finally retire from the same?

Ques. 3. Please state whether among the assets of said bank, turned over to you as receiver, was the bond for twenty thousand dollars executed by the Marine and River Phosphate Mining and Manufacturing Company of South Carolina, described in the first paragraph of the bill of complaint in this cause.

Ques. 4. If you say said bond was among said assets turned over to you, will you please state what disposition you made of it?

If you sold, assigned, and delivered said bond to anybody, when, to whom, and for what, and how much did you receive in consideration therefor?

67 Ques. 5. By what authority did you sell, assign, and deliver said bond, and where is the evidence of said authority?

Ques. 6. Did you enter said transaction, the sale and transfer of said bond, in your final account as receiver? And did the consideration received for said bond go into and become a part of the assets of said Bank of the State?

Ques. 7. Were your accounts as receiver of said bank approved by the court of common pleas for Charleston County, South Carolina, and

you duly and formally discharged as such receiver and your bond celled?

Ques. 8. Please state any other fact not already stated that you may know of interest or advantage to the plaintiff.

EARLE & WELLS,
Plaintiff's Attorneys.

J. B. CAMPBELL,
Of Counsel.

We accept service of a copy of the within direct interrogatory. May 18, 1878.

BUIST & BUIST,
Att'ys of Williams & Co.
A. G. MAGRUTH, *Sol'r.*
W. ST. JULIAN JERVEY, *Sol'r.*

MAY 20,' 78.

Filed 18' May, 1878. J. E. Hagood, C. C. C. U. S., dist. S. C.

68 United States of America, district of South Carolina, circuit court of the United States, fourth circuit. In equity.

WILLIAM E. BRADLEY, PLAINTIFF,
vs.
THE MARINE & RIVER PHOSPHATE MINING and Manufacturing Company of South Carolina, Louis D. Mowry, Francis J. Pelzer, Francis S. Rogers, Wesley G. Muckenfuss, and Thomas S. Inglesby, partners under style of "Pelzer, Rogers & Co.," George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor, & Robert E. Cathcart, partners under the style of George W. Williams & Co., defendants.

On this twenty-seventh and twenty-eighth days of August, A. D. 1878, at Minneapolis, in the county of Hennepin, in the State of Minnesota, under and by virtue of the commission hereto attached in the above-entitled action, the said commissioners in said commission appointed, to wit, J. Mackey, Henry Tucker, and George H. Spry,
69 met at ten o'clock a. m. at the office of J. Mackey, one of said commissioners, in the city of Minneapolis, in the county of Hennepin, and State of Minnesota, for the purpose of examining Reuben Tomlinson, as a witness in the above-entitled action, and submitting to him the interrogatories hereto attached and receiving his answers thereto, having first taken and subscribed to the oath as commissioners.

REUBEN TOMLINSON, being duly sworn, deposes and says:

Answer to 1st interrogatory. I am forty-five years of age; I reside in Minneapolis, Minnesota, at present, and am not engaged in any business.

Answer to 2nd interrogatory. I was treasurer of the Marine and River Phosphate Mining and Manufacturing Company from March, A. D. 1871, to March, A. D. 1877. Cannot say the exact day in March, 1871, I commenced, but I was elected as treasurer the first Wednesday in March and resigned the first Wednesday in March of the year mentioned, respectively.

Ans. to 3d interrogatory. I did, as treasurer of said company,
70 sign such a bond, and on the day mentioned.

Ans. to 4th interrogatory. The Marine and River Phosphate Mining and Manufacturing Company received, as the consideration of said bond, the sum of twenty thousand dollars.

Ans. to 5th interrogatory. Said company did not at the maturity of said bond pay the same to Wm. J. Gayer, receiver. Said company did not pay said bond at any subsequent date to said Wm. J. Gayer as receiver, nor did it pay said bond or any money due thereon to C. C. Puffer as receiver.

Ans. to 6th interrogatory. I did pay the interest to said receivers, and, to the best of my recollection, up to the first of January, 1874.

Ans. to 7th interrogatory. Yes; I did know of the purpose of D. T. Corbin and A. J. Coe to purchase said bond of C. C. Puffer, receiver, but cannot say with certainty that it was in either April or May that I had such knowledge. My knowledge of their design was the result of frequent conversations with Mr. Corbin as to the condition of
71 the aforesaid company, and my recollection is that the urgent necessities of the company was the controlling reason inducing the parties aforesaid to purchase said bond.

Ans. to 8th interrogatory. I was so informed by Mr. Corbin, and did see said bond in his possession.

Ans. to 9th interrogatory. Payment of said bond had been requested by C. C. Puffer, receiver, prior to the purchase thereof by D. T. Corbin and A. J. Coe, and no part thereof was paid to him by the company. It was not convenient at that time for the company to pay the bond.

Ans. to 10th interrogatory. I do. They paid in stock of the River and Marine Phosphate Mining and Manufacturing Company of South Carolina, and according to my best recollection, four hundred shares or four hundred and fifty shares.

The company had no interest, either directly or indirectly, in the said consideration paid by Corbin and Coe for said bond.

Ans. to 11th interrogatory. He did.

72 Ans. to 12th interrogatory. He did, but not formally. I, as treasurer, fully understood that the bond was his, and that the interest and principal thereof should be paid to him.

Ans. to 13th interrogatory. After the said bond came into the possession of said Corbin, and after I saw it in his possession, and he informed me that the same was his by purchase of C. C. Puffer, receiver, he informed me that he would renew the said bond if the company would pay interest thereon at the then bank rates of twelve per cent. per annum, interest payable quarterly. There was a form of renewal prepared to be endorsed upon the bond, and approved by Corbin. I objected to taking any action, inasmuch as he, Corbin, was interested in the matter, without first submitting the question of renewal to the board of directors of the company. The form of renewal was the one subsequently agreed to by the board of directors and by them ordered to be endorsed on said bond.

Ans. to 14th interrogatory. I was. My best recollection is that
73 it was known to some of the directors, if not all of them, that the said bond was then the property of D. T. Corbin, although nothing was said upon the subject of the ownership during the meeting; but immediately after the adjournment of said meeting Mr. Robertson, one of the directors, in conversation with me said, in substance, "I take it for granted this bond belongs to Corbin now."

On the next day after the meeting or within a few days thereof, Mr.

Isaacs, another of the directors, in discussing the affairs of the company spoke of this bond of the company as the property of Mr. Corbin.

Ans. to 15th interrogatory. I did, by direction of the board of directors' and attached the seal of the company thereto.

Ans. to 16th interrogatory. Yes, as to both questions.

Ans. to 17th interrogatory. I did.

Ans. to 18th interrogatory. I did. The interest, as paid, was entered upon the books of the company.

74 Ans. to 19th interrogatory. The fact that D. T. Corbin was the owner and holder of said bond was well known to all the directors of the company during the period from its renewal to March A. D. 1877. I am not able to fix with certainty the date of the renewal.

And at no time was his right to own and hold said bond and receive the interest and principal thereon from the company denied by any of the directors.

Ans. to 20th interrogatory. I did; the bond always appeared on these statements, and also in my annual statements to the stockholders of the company, as an outstanding indebtedness of the company from the date of the renewal of the bond to March, A. D. 1877.

The interest paid on this bond was reported, not as a separate item, but in the general interest account as stated to the board of directors, monthly. It was well known, however, by the board that the interest was paid as it fell due.

Ans. to 21st interrogatory. No objection at any time was made to the payment of the interest on said bond, by any director of said company, up to the time I left the service of the company in March, 1877.

75 Ans. to 22d interrogatory. I did; said payment was entered on the books of the company and was reported in my monthly statement to the board of directors and in that way became known to them. As a matter of fact it was known to some if not all of them at the time the payment was made; the funds on hand at the time having been provided for other purposes, I did not feel at liberty to use them for that purpose without first consulting with such directors as were conveniently at hand.

Ans. to 23d interrogatory. No director objected to the payment.

Ans. to 24th interrogatory. Mr. Corbin frequently, during the months of January and February, A. D. 1877, requested me to arrange for the payment of the balance of $10,000 principal and the interest due on said bond.

The matter was brought to the attention of the directors by me, and no objection was made by them to the payment of said money if it could be raised without serious embarrassment to the company. Ar-

76 rangements to pay said bond were finally made, and the money actually raised and deposited in bank for that purpose, subject, however, to conditions the fulfillment of which was prevented by the change in the organization of the company, which took place in March, 1877.

Answer to 25th interrogatory. Mr. Corbin was absent from the city of Charleston, and was in the city of Washington, when said final arrangements were made to pay said balance due on said bond, and I, as treasurer, informed him that I would take up his said bond whenever satisfaction of said bond was entered on the books of the register of mesne conveyances of Charleston County.

REUBEN TOMLINSON.

Subscribed and sworn to before us this 28th day of August, A. D. 1878.

J. MACKEY,
HENRY TUCKER,
GEORGE H. SPRY,
Commissioners.

The foregoing deposition was reduced to writing by one of the commissioners. No clerk was employed for the purpose.

J. MACKEY.
HENRY TUCKER.
GEO. H. SPRY.

77 *Commission to examine witness.*

THE UNITED STATES OF AMERICA,
South Carolina District:

The President of the United States of America to J. Mackey, Henry Tucker, George H. Spry, esquires, greeting:

Whereas a certain cause is now depending in the circuit court of the United States for the fourth circuit in the district of South Carolina, between William L. Bradley, complainant, and The Marine and River Phosphate Mining and Manufacturing Company, Louis D. Mowry, Francis J. Pelzer, and others, defendants. And it being necessary to the investigation of the said cause that certain persons resident in Minneapolis, in the State of Minnesota, should be examined on certain interrogatories: Now know ye, that in confidence of your prudence, ability, and integrity, you are appointed, and by these presents full power and authority are given to you, or any two or more of you, to examine all witnesses whatsoever, as well on the part of the said complainant as on the part of the said defendants, or either of them, upon interrogatories: and therefore you, or any two or more of you, are hereby authorized and required, on certain days and at certain places, to be appointed by you for that purpose, to cause such witnesses to come before you, and then and there to examine each of them apart on the said interrogatories, on their respective corporal oaths first taken, before you, or any two or more of you, and to reduce their depositions to writing, and return this writ to the clerk of the said court at Charleston, in the State of South Carolina, under your seals, with the said interrogatories and depositions annexed; and you, and every of you, are hereby further required that before you proceed to swear and examine any witness you severally take the oath first specified in the schedule hereunto annexed; and any one of you is hereby authorized and empowered to administer such oath to the other or others of you. And you are hereby further authorized and required, jointly or separately, to administer the oath last specified in the said schedule hereunto annexed to any clerk employed in taking the deposition of witnesses aforesaid before such clerk is permitted to act or be present at such examination.

Witness the honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the 23d day of July, in the year of our Lord one thousand eight hundred and seventy-eight, and in the 103d year of the sovereignty and Independence of the United States of America.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. of S. C.

78 *Commissioner's oath.*

You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed, and sworn to secresy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the circuit court of the United States. So help you God.

J. MACKEY.
HENRY TUCKER.
GEORGE H. SPRY.

Severally subscribed and sworn to before me at Minneapolis, Minnesota, this twenty-seventh day of August, A. D. 1878.

[SEAL.] F. J. MACKEY,
Notary Public, Hennepin County, Minnesota.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them, to take and write down and engross the said depositions, or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses, or any of them, to be taken or written down, transcribed, or engrossed by you, or whereto you shall have recourse, or be any ways privy, until publication shall pass by rule or order of the circuit court of the United States. So help you God.

Instructions for the commissioners.

The commissioners are requested, in the first place, to observe carefully the directions contained in the body of the commission. Any two of them will be sufficient to take the examination. Notice is to be given to the commissioners on the other side of the time and place of examination, and if they do not attend the examination may proceed in their absence.

When the examination of the witness is completed, his depositions are to be signed by him and attested by the commissioners.

When the examination of all the witnesses is closed, the interrogatories and depositions are to be annexed to the commission, and the whole enclosed in a large paper under seal. The commissioners will endorse on one corner of the outside of it the name of the cause, and seal the packet with their seals, and write their names across the seals, and direct it to the clerk or register by whom the commission is signed.

If the commission is returned by post, one of the commissioners will

Subscribed and sworn to before us this 28th day of August, A. D. 1878.

J. MACKEY,
HENRY TUCKER,
GEORGE H. SPRY,
Commissioners.

The foregoing deposition was reduced to writing by one of the commissioners. No clerk was employed for the purpose.

J. MACKEY,
HENRY TUCKER.
GEO. H. SPRY.

77 *Commission to examine witness.*

THE UNITED STATES OF AMERICA,
South Carolina District:

The President of the United States of America to J. Mackey, Henry Tucker, George H. Spry, esquires, greeting:

Whereas a certain cause is now depending in the circuit court of the United States for the fourth circuit in the district of South Carolina, between William L. Bradley, complainant, and The Marine and River Phosphate Mining and Manufacturing Company, Louis D. Mowry, Francis J. Pelzer, and others, defendants. And it being necessary to the investigation of the said cause that certain persons resident in Minneapolis, in the State of Minnesota, should be examined on certain interrogatories: Now know ye, that in confidence of your prudence, ability, and integrity, you are appointed, and by these presents full power and authority are given to you, or any two or more of you, to examine all witnesses whatsoever, as well on the part of the said complainant as on the part of the said defendants, or either of them, upon interrogatories: and therefore you, or any two or more of you, are hereby authorized and required, on certain days and at certain places, to be appointed by you for that purpose, to cause such witnesses to come before you, and then and there to examine each of them apart on the said interrogatories, on their respective corporal oaths first taken, before you, or any two or more of you, and to reduce their depositions to writing, and return this writ to the clerk of the said court at Charleston, in the State of South Carolina, under your seals, with the said interrogatories and depositions annexed; and you, and every of you, are hereby further required that before you proceed to swear and examine any witness you severally take the oath first specified in the schedule hereunto annexed; and any one of you is hereby authorized and empowered to administer such oath to the other or others of you. And you are hereby further authorized and required, jointly or separately, to administer the oath last specified in the said schedule hereunto annexed to any clerk employed in taking the deposition of witnesses aforesaid before such clerk is permitted to act or be present at such examination.

Witness the honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the 23d day of July, in the year of our Lord one thousand eight hundred and seventy-eight, and in the 103d year of the sovereignty and independence of the United States of America.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S., Dist. of S. C.

78 *Commissioner's oath.*

You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed, and sworn to secresy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the circuit court of the United States. So help you God.

J. MACKEY.
HENRY TUCKER.
GEORGE H. SPRY.

Severally subscribed and sworn to before me at Minneapolis, Minnesota, this twenty-seventh day of August, A. D. 1878.

[SEAL.] F. J. MACKEY,
Notary Public, Hennepin County, Minnesota.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them, to take and write down and engross the said depositions, or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses, or any of them, to be taken or written down, transcribed, or engrossed by you, or whereto you shall have recourse, or be any ways privy, until publication shall pass by rule or order of the circuit court of the United States. So help you God.

Instructions for the commissioners.

The commissioners are requested, in the first place, to observe carefully the directions contained in the body of the commission. Any two of them will be sufficient to take the examination. Notice is to be given to the commissioners on the other side of the time and place of examination, and if they do not attend the examination may proceed in their absence.

When the examination of the witness is completed, his depositions are to be signed by him and attested by the commissioners.

When the examination of all the witnesses is closed, the interrogatories and depositions are to be annexed to the commission, and the whole enclosed in a large paper under seal. The commissioners will endorse on one corner of the outside of it the name of the cause, and seal the packet with their seals, and write their names across the seals, and direct it to the clerk or register by whom the commission is signed.

If the commission is returned by post, one of the commissioners will

Subscribed and sworn to before us this 28th day of August, A. D. 1878.

J. MACKEY,
HENRY TUCKER,
GEORGE H. SPRY,
Commissioners.

The foregoing deposition was reduced to writing by one of the commissioners. No clerk was employed for the purpose.

J. MACKEY.
HENRY TUCKER.
GEO. H. SPRY.

77 *Commission to examine witness.*

THE UNITED STATES OF AMERICA.
South Carolina District:

The President of the United States of America to J. Mackey, Henry Tucker, George H. Spry, esquires, greeting:

Whereas a certain cause is now depending in the circuit court of the United States for the fourth circuit in the district of South Carolina, between William L. Bradley, complainant, and The Marine and River Phosphate Mining and Manufacturing Company, Louis D. Mowry, Francis J. Pelzer, and others, defendants. And it being necessary to the investigation of the said cause that certain persons resident in Minneapolis, in the State of Minnesota, should be examined on certain interrogatories: Now know ye, that in confidence of your prudence, ability, and integrity, you are appointed, and by these presents full power and authority are given to you, or any two or more of you, to examine all witnesses whatsoever, as well on the part of the said complainant as on the part of the said defendants, or either of them, upon interrogatories: and therefore you, or any two or more of you, are hereby authorized and required, on certain days and at certain places, to be appointed by you for that purpose, to cause such witnesses to come before you, and then and there to examine each of them apart on the said interrogatories, on their respective corporal oaths first taken, before you, or any two or more of you, and to reduce their depositions to writing, and return this writ to the clerk of the said court at Charleston, in the State of South Carolina, under your seals, with the said interrogatories and depositions annexed; and you, and every of you, are hereby further required that before you proceed to swear and examine any witness you severally take the oath first specified in the schedule hereunto annexed; and any one of you is hereby authorized and empowered to administer such oath to the other or others of you. And you are hereby further authorized and required, jointly or separately, to administer the oath last specified in the said schedule hereunto annexed to any clerk employed in taking the deposition of witnesses aforesaid before such clerk is permitted to act or be present at such examination.

Witness the honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the 23d day of July, in the year of our Lord one thousand eight hundred and seventy-eight, and in the 103' year of the sovereignty and Independence of the United States of America.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. of S. C.

78 *Commissioner's oath.*

You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed, and sworn to secresy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the circuit court of the United States. So help you God.

J. MACKEY.
HENRY TUCKER.
GEORGE H. SPRY.

Severally subscribed and sworn to before me at Minneapolis, Minnesota, this twenty-seventh day of August, A. D. 1878.

[SEAL.] F. J. MACKEY,
Notary Public, Hennepin County, Minnesota.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them, to take and write down and engross the said depositions, or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses, or any of them, to be taken or written down, transcribed, or engrossed by you, or whereto you shall have recourse, or be any ways privy, until publication shall pass by rule or order of the circuit court of the United States. So help you God.

Instructions for the commissioners.

The commissioners are requested, in the first place, to observe carefully the directions contained in the body of the commission. Any two of them will be sufficient to take the examination. Notice is to be given to the commissioners on the other side of the time and place of examination, and if they do not attend the examination may proceed in their absence.

When the examination of the witness is completed, his depositions are to be signed by him and attested by the commissioners.

When the examination of all the witnesses is closed, the interrogatories and depositions are to be annexed to the commission, and the whole enclosed in a large paper under seal. The commissioners will endorse on one corner of the outside of it the name of the cause, and seal the packet with their seals, and write their names across the seals, and direct it to the clerk or register by whom the commission is signed.

If the commission is returned by post, one of the commissioners will

sign a memorandum on the outside to certify that the enclosed was lodged by him in the post-office.

79 UNITED STATES OF AMERICA,
District of South Carolina:

Circuit court of the United States. Fourth circuit. In equity.

WILLIAM L. BRADLEY, PLAINTIFF,
vs.
(1.) THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company of South Carolina. (2.) Louis D. Mowry, Francis J. Pelzer, Francis S. Rogers, Wesley G. Muchenfuss, Thomas S. Inglesby, partners under style of (3.) Pelzer, Rogers & Co., George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor & Robert E. Cathcart, partners under the style (4.) of George W. Williams & Co., defendants.

Interrogatories to be propounded to Reuben Tomlinson, of Min-
80 neapolis, Minnesota, a witness examined on behalf of the plaintiff in the above-entitled cause.

Ques. 1. What is your age, residence, and business?

Ques. 2. What official relation, if any, did you sustain to the Marine and River Phosphate Mining and Manufacturing Company of South Carolina, one of the defendants in this case; when did that relation begin, and when did it terminate?

Ques. 3. If you say you sustained the relation of treasurer to said company, state whether you, as said treasurer, signed a bond for the sum of twenty thousand dollars, given to William J. Gayer, receiver, dated December 28th, 1872?

Ques. 4. If you say you did sign such a bond, will you state what consideration the said Marine and River Phosphate Mining and Manufacturing Company of South Carolina received for said bond?

Ques. 5. Did said company, of which you were treasurer, pay said bond at maturity to Wm. J. Gayer, receiver? If you say no, state whether said company paid said bond to Wm. J. Gayer at any subsequent date or to any successor of Wm. J. Gayer as receiver of the as-
81 sets of Bank of the State of South Carolina, especially; did said company pay said bond or any part of the money due thereon to C. C. Puffer, as receiver?

Ques. 6. Did you, as treasurer of said company, pay the interest on said bond as it fell due to the successive receivers of the assets of the Bank of the State? If you say yes, to what date did you so pay interest?

Ques. 7. State whether you knew of the purpose of Mr. D. T. Corbin and A. J. Coe to purchase said bond of C. C. Puffer, receiver, in April or May of 1874? If you say yes, state how you knew and what you knew about it?

Ques. 8. Were you, as treasurer of said company, informed by D. T. Corbin of the final purchase of said bond of C. C. Puffer, receiver, and the subsequent possession thereof by him; and did you sell the said bond in his possession?

Ques. 9. Had the payment of said bond been requested of the said company by the receiver, C. C. Puffer, prior to the purchase thereof by D. T. Corbin and A. J. Coe? If you answer yes, state whether
82 any part thereof was paid to him by the company. If you say no part was paid to him, state whether it was then convenient for the company to pay the bonds.

Ques. 10. Do you know what D. T. Corbin and A. J. Coe paid for said bond? If so, please state, and state further whether the said company owned or possessed directly or indirectly any interest in the consideration paid by Mr. A. J. Coe and D. T. Corbin for said bond?

Ques. 11. After said bond came into the possession of D. T. Corbin in May or June, 1874, did he inform you thereof as treasurer of said company?

Ques. 12. Did he notify you finally that said bond was his property and that the said company must pay the interest and principal thereof to him?

Ques. 13. State whether, after the said bond came into the possession of D. T. Corbin and after you saw it in his possession, and after he informed you, if he did, that the same was his property by purchase of C. C. Puffer, receiver, he informed you that he desired the company to renew the said bond and pay interest thereon at the then bank rates, twelve per cent. quarterly, and that upon substantially those
83 conditions he was willing to extend the time of payment of the bond. If you say yes, state whether a form of renewal to be endorsed upon the bond was prepared and the same approved by him. State whether it was agreed between you and him that inasmuch as he was interested, the question of the renewal of said bond must be submitted to and be approved by the board of directors. State whether this renewal was the one subsequently agreed to by the board of directors and directed to be endorsed on said bond.

Ques. 14. State whether you were present at the meeting of the board of directors of said company at the time action was taken in reference to renewing and extending said bond. If you say that you were, will you state whether it was known to the directors or any of them and before said action renewing and extending said bond was taken, that said bond was then the property of D. T. Corbin. If you say said directors or any of them did have such knowledge respecting the then ownership of said bond, state how you know the fact that they
84 had such knowledge.

Quest. 15. Did you, as treasurer, write or cause the endorsement renewing and extending said bond to be written thereon as it was written? If you answer yes, state by what authority you did so. Did you cause the seal of the company to be attached thereto?

Ques. 16. State whether D. T. Corbin, after the said endorsement upon the said bond was prepared by you as treasurer, signed the same as president, and whether you, at the same time, signed the same as treasurer.

Ques. 17. After you had signed and sealed said endorsement, renewing and extending said bond, state whether you delivered the same to D. T. Corbin as his property.

Ques. 18. Did you, as treasurer of said company henceforth till January, 1877, pay the interest, as it matured, on said bond, to D. T. Corbin? If you say yes, state whether the fact of such payment was entered upon the books of the company.

Ques. 19. State whether the fact that D. T. Corbin was the owner
85 and holder of said bond was not well known to all the directors

of the company during the period from May, 1874, till March, 1877. If so, state whether any one of them at any time denied his right to own and hold said bond or denied his right to collect and receive the interest and principal thereof from the company.

Ques. 20. Did you, as treasurer of said company, make monthly statements to the directors of the outstanding indebtedness of the company and also of your disbursements? If you say that you did, state whether said bond always appeared in those statements and also in your annual statements to the stockholders of the company as an outstanding indebtedness of the company from May, 1874, till March, 1877, and state whether the interest paid by you on said bond was reported when it was paid to the board of directors in your statement of disbursements.

Ques. 21. If you say that the payment of *of* said interest on said bond was reported by you to the board of directors, state whether any
86 director, from May, 1874, till March, 1877, ever objected to said payment of said interest to D. T. Corbin?

Ques. 22. State whether in December, 1876, you, as treasurer of said company, paid ten thousand dollars to D. T. Corbin in part payment of the principal of said bond. If you say yes, state whether said payment was entered on the books of the company, was reported in your monthly statement of disbursements to the board of directors, and did it in that way or any other way become known to the codirectors or any of them?

Ques. 23. If you say said payment of said ten thousand dollars on said bond to D. T. Corbin was reported on your monthly statement of disbursements, or in any way become known to the directors or any of them, state whether any one of them objected to said payment.

Ques. 24. Will you state whether D. T. Corbin at any time during January or February, 1877, made demand on you as treasurer
87 for the payment of the balance of ten thousand dollars and interest due on said bond. If yes, will you state whether any objection was then made on the part of any of the directors to paying said balance due; and state further whether arrangements were not actually made to pay said bond by the directors; whether the money to pay said bond was not actually raised and deposited in bank for that purpose.

Ques. 25. If you answer such arrangements were made, state whether or no D. T. Corbin was absent from the city of Charleston and in the city of Washington when said final arrangement was made to pay said balance due on said bond; and state, if so, whether you did not, as treasurer, inform him that the money was ready to be paid him on said bond as soon as he would enter satisfaction upon the record of said bond, in the office of the register of mesne conveyances of Charleston County, or to that effect.

EARLE & WELLS,
Plaintiff's Att'ys.

Service accepted.

27 June, 1878.

A. G. MAGRATH.

BUIST & BUIST.

June 27, 1878.

W. ST. JULIAN JERVEY,
For M. & R. Co.

Filed 27 June, 1878. J. E. Hagood, C. C. C. U. S., dist. S. C.

88 UNITED STATES OF AMERICA,
District of South Carolina:

Circuit court of the United States, fourth circuit.

WILLIAM L. BRADLEY
vs.
THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company of South Carolina Louis D. Mowry and others. } In equity.

Deposition of witnesses sworn and examined in the above-entitled cause, before commissioners in Boston, in the State of Massachusetts upon the interrogatories hereto and to the commission annexed.

Deposition of William L. Bradley.

Answer 1. My age is fifty-two; residence, Boston, Massachusetts; business, manufacturer of fertilizers.

Answer 2. I am.

Answer 3. I purchased it from D. T. Corbin, who was then living in Charleston, South Carolina. I do not remember the date. Mr. Corbin made me a proposition to buy it, and I paid the amount of money which he asked. I do not now know the exact amount of money.

89 I will refer to my books and letters, and will then give you the date and amount.

Answer 4. I do.

(After an adjournment to enable the witness to refer to books and letters mentioned in third answer above, he further testifies as follows:)

The date of the purchase referred to in the third question was June seventeenth, A. D. 1877. I paid ten dollars in money and agreed, on certain conditions, to pay enough more to make up the face of the bond valued at ten thousand dollars and interest.

WILLIAM L. BRADLEY.

Attest:

OLIVER W. HOLMES, JR., [SEAL.]
ROBERT L. SPEAR, [SEAL.]
W. S. MACFARLANE, [SEAL.]
Commissioners.

90 UNITED STATES OF AMERICA,
District of South Carolina:

Circuit court of the United States, fourth circuit.

WILLIAM L. BRADLEY
vs.
THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company of South Carolina, Louis D. Mowry, and others. } In equity.

Deposition of witnesses sworn and examined in the above-entitled cause before commissioners in Boston, in the State of Massachusetts, upon the interrogatories hereto and to the commission annexed.

Deposition of Andrew J. Coe.

Answer 1. My residence is Meriden, Connecticut; age, forty-three

I am engaged in the manufacturer of fertilizers—that is my business; my usual place of business is in Boston.

Answer 2. To the best of my recollection I was there through April and part of May. I am uncertain whether I was there in May or not. I was interested pecuniarily in said company. I had fifty shares of the stock of the company.

Attest:

OLIVER W. HOLMES, JR.,
ROBERT L. SPEAR,
W. S. MACFARLANE,
Commissioners.

91 Answer 3. I learned that Mr. Puffer, as such receiver, had the bond of the company and would sell it for stock of the company at a certain price. I purchased the stock of Mr. Corbin—to the best of my recollection four hundred (400) shares—and with this stock purchased the bond from Mr. Puffer. I sold the bond to Mr. Corbin. I paid him for the four hundred shares with the bond.

Answer 4. My last answer answers this question.

Answer 5. My third answer gives my recollection as to the consideration; said company had no interest in the stock given for the bond, so far as I know.

Answer 6. At this distance of time I can't swear as to that.

Answer 7. I was a director of the company during the period named. To the best of my recollection the bond was an outstanding obligation of the company. I had, as an officer of the company, official knowledge that the bond was an outstanding obligation of the company for a long time. It was so about that time. I don't like to be positive about dates without consulting papers and refreshing my recollection.

92 I knew of the payment of ten thousand dollars, about December, 1876, to D. T. Corbin, on account of the bond, but cannot fix precise date. I know that the company were desirous to make the payment of the balance but cannot now recall any special circumstances. To the last clause of the question (as to the extent to which the effort reached by way of raising money) I answer, I cannot remember.

Answer 8. To the whole question I answer, I did not.

ANDREW J. COE.

Attest:

OLIVER W. HOLMES, JR., [SEAL.]
ROBERT L. SPEAR, [SEAL.]
W. S. MACFARLANE, [SEAL.]
Commissioners.

93 UNITED STATES OF AMERICA.
District of South Carolina:

Circuit court of the United States, fourth circuit. In equity.

WILLIAM L. BRADLEY, PLAINTIFF,
vs.
(1.) THE MARINE AND RIVER PHOSPHATE MINing and Manufacturing Company of South Carolina; (2,) Louis D. Mowry, Francis J. Pelzer, Francis S. Rogers, Wesley G. Muckenfuss, and Thomas S. Inglesby, partners under the style of (3,) Pelzer, Rogers & Co., George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor, and Robert E. Cathcart, partners under the style of (4,) George W. Williams and Co., defendants.

Oliver W. Holmes, junior, Robert L. Spear, and W. S. Macfarlane, commissioners to take testimony in the above-entitled cause, met
94 on Wednesday, the fourteenth day of August, A. D. 1878, at ten o'clock in the morning, at the office of said W. S. Macfarlane, in Sears Building, at the corner of Court street and Washington street, in Boston, in the State and district of Massachusetts, said time and place having been appointed by the said commissioners, for the purpose of examining the witnesses hereinafter mentioned in said cause; and said Oliver W. Holmes, junior, then and there administered the commissioners' oath annexed to the commission in said cause to said Robert L. Spear and said W. S. Macfarlane; and said W. S. Macfarlane then and there administered said oath to said Oliver W. Holmes, junior; and immediately after taking said oath said commissioners then and there caused William L. Bradley, plaintiff in the above-entitled action, and Andrew J. Coe, having his usual place of business in said Boston, witnesses in said cause, to come before them, and then and there first examined said William L. Bradley apart on the interrogatories propounded to him in said cause and annexed hereto, and then examined said Andrew J. Coe apart on the interrogatories propounded to him in said cause and hereto annexed on the respective corporal oaths of said
95 Bradley and said Coe, first taken before said commissioners; and said commissioners reduced the depositions of said Bradley and Coe to writing (no clerk being employed)—the deposition of said Bradley in the presence of said Bradley, and the deposition of said Coe in the presence of said Coe; and the deposition of said Bradley was by said commissioners carefully read over to said Bradley, and the deposition of said Coe was by said commissioners carefully read over to said Coe, and the same were by said Bradley and said Coe respectively subscribed, in the presence of said commissioners, and are hereto and to said commission annexed, together with the interrogatories in answer to which they were respectively given.

OLIVER W. HOLMES, JR., [SEAL.]
ROBERT L. SPEAR, [SEAL.]
W. S. MACFARLANE, [SEAL.]
Commissioners Aforesaid.

Commissioners' fees ($15 each), $45.

96 *Commission to examine witness.*

THE UNITED STATES OF AMERICA.
South Carolina District:

The President of the United States of America to Oliver W. Holmes, Robert L. Spear, & W. S. Macfarlane, greeting:

Whereas a certain cause is now depending in the circuit court of the United States for the fourth circuit, in the district of South Carolina, between William L. Bradley, complainant, and the Marine and River Phosphate Mining and Manufacturing Company of South Carolina, Louis D. Mowry, Francis J. Pelzer, and others, defendants; and it being necessary to the investigation of the said cause that certain persons resident in Boston, Massachusetts, should be examined on certain interrogatories: Now know ye, that in confidence of your prudence, ability, and integrity, you are appointed, and, by these presents, full power and authority are given to you, or any two or more of you, to examine all witnesses whatsoever, as well on the part of the said complainant as on the part of the said defendants, or either of them, upon interrogatories; and, therefore, you, or any two or more of you, are hereby authorized and required, on certain days and at certain places, to be appointed by you for that purpose, to cause such witnesses to come before you, and then and there to examine each of them apart on the said interrogatories, on their respective corporal oaths, first taken before you or any two or more of you, and to reduce their depositions to writing, and return this writ to the clerk of the said court at Charleston, in the State of South Carolina, under your seals, with the said interrogatories and depositions annexed. And you, and every of you, are hereby further required that before you proceed to swear and examine any witness you severally take the oath first specified in the schedule hereunto annexed; and any one of you is hereby authorized and empowered to administer such oath to the other or others of you. And you are hereby further authorized and required, jointly or separately, to administer the oath last specified in the said schedule hereunto annexed to any clerk employed in taking the deposition of witnesses aforesaid, before such clerk is permitted to act or be present at such examination.

Witness the honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the 23ᵈ day of July, in the year of our Lord one thousand eight hundred and seventy-eight, and in the 103ᵈ year of the sovereignty and Independence of the United States of America.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. of S. C.

97 *Commissioner's oath.*

You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed, and sworn to secresy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the circuit court of the United States; so help you God.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them, to take and write down and engross the said depositions, or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses, or any of them, to be taken or written down, transcribed or engrossed, by you, or whereto you shall have recourse, or be any ways privy, until publication shall pass by rule or order of the circuit court of the United States; so help you God.

Instructions for the commissioners.

The commissioners are requested, in the first place, to observe carefully the directions contained in the body of the commission. Any two of them will be sufficient to take the examination. Notice is to be given to the commissioners on the other side of the time and place of examination, and if they do not attend the examination may proceed in their absence.

When the examination of the witness is completed his depositions are to be signed by him and attested by the commissioners.

When the examination of all the witnesses is closed the interrogatories and depositions are to be annexed to the commission, and the whole enclosed in a large paper, under seal. The commissioners will endorse on one corner of the outside of it the name of the cause, and seal the packet with their seals, and write their names across the seals and direct it to the clerk or register by whom the commission is signed.

If the commission is returned by post one of the commissioners will sign a memorandum on the outside, to certify that the enclosed was lodged by him in the post-office.

98 UNITED STATES OF AMERICA.
District of South Carolina:

Circuit court of the United States, fourth circuit. In equity.

WILLIAM L. BRADLEY, PLAINTIFF,
vs.
(1) THE MARINE AND RIVER PHOSPHATE MINing and Manufacturing Company of South Carolina, (2) Louis D. Mowry, Francis J. Pelzer, Francis S. Rogers, Wesley G. Muchenfuss, & Thomas S. Inglesby, partners under the style of (3) Pelzer, Rogers and Co.; Geo. W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor, & Robert E. Cathcart, partners under the style (4) of Geo. W. Williams & Co., defendants.

99 Interrogatories to be propounded to William L. Bradley, plaintiff in the above-entitled cause, examined on behalf of himself.

Ques. 1. What is your age, residence, and business?

Ques. 2. Are you the plaintiff in this suit and the owner of the bond set out therein as the cause of the action?

Ques. 3. From whom did you purchase said bond, when did you purchase the same, and how much did you pay therefor?

Ques. 4. Do you now own and hold said bond as your own property?

EARLE & WELLS,
Plaintiff's Att'y.

Service accepted.
27th June, 1878.
June 27, '78.

A. G. MAGRATH,
BUIST & BUIST,
W. ST. JULIAN JERVEY,
For M. & R. Co.

Filed 27th June, 1878. J. E. Hagood, C. C. C. U. S. dist., S. C.

100 UNITED STATES OF AMERICA,
District of South Carolina:

Circuit court of the United States, fourth circuit. In equity.

WILLIAM L. BRADLEY, PLAINTIFF.
vs.
(1.) THE MARINE AND RIVER PHOSPHATE MINING and Manufacturing Company, of South Carolina; (2). Louis D. Mowry, Francis J. Pelzer, Francis S. Rogers, Wesley G. Muchenfuss, & Thomas S. Inglesby, partners under the style of (3) Pelzer, Rogers & Co., George W. Williams, William Birnie, Joseph R. Robertson, James Bridge, jr., Frank E. Taylor, & Robert E. Catheart, partners under the style of (4) Geo. W. Williams and Co., defendants.

Interrogatories to be propounded to Andrew J. Coe, of Boston, Massachusetts, a witness to be examined on behalf of the plaintiff in the above-entitled cause.

101 Ques. 1. What is your residence, age, and business?

Ques. 2. Were you in April and May, 1874, in Charleston, South Carolina, and were you interested, pecuniarily or otherwise, and how much, in the Marine and River Phosphate Mining and Manufacturing Company of South Carolina?

Ques. 3. State what you know of the circumstances of the purchase by you and D. T. Corbin of the bond of twenty thousand dollars, executed by the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina of C. C. Puffer, receiver, of the assets of the Bank of the State of South Carolina.

Ques. 4. What was the consideration and who furnished the same given by you and D. T. Corbin for said bond?

Ques. 5. If you say that thirty thousand dollars, par value, of the said company's stock was given in exchange for said bond, state whether, so far as you know, said company owned any interest in said stock given in exchange for said bond.

Ques. 6. Who conducted the negotiations with C. C. Puffer, receiver, which resulted in the purchase of said bond?

102 Ques. 7. Were you connected officially with said company from March, 1876, to March, 1877, as a director?

If you say you were, state whether you knew that the said twenty-thousand-dollar bond was during any part of said period an outstanding obligation of said company, and did you know of the part payment thereof to D. T. Corbin by the company in December, 1876, and did you know of any effort made by the board of directors and treasurer to pay the balance remaining due and unpaid thereon to him in January and February of 1877? To what extent did the effort to pay said bond reach by way of raising money?

Ques. 8. Did you or not, while a director or stockholder of said company, ever hear any other director or stockholder, or did you yourself, question the right of D. T. Corbin to own and hold said bond, or his right to collect and receive the interest thereon or the principal thereof?

EARLE & WELLS,
Plaintiff's Att'y.

Service accepted.

27, June, 1878.
June 27, '78.

A. G. MAGRATH,
BUIST & BUIST,
W. ST. JULIAN JERVEY,
For M. & R. Co.

Filed 27 June, 1878. J. E. Hagood, C. C. C. U. S., dist. S. C.

103 UNITED STATES OF AMERICA,
District of South Carolina:

In circuit court, fourth circuit.

I, J. E. Hagood, clerk of the said court, do hereby certify that the foregoing is a true copy of the original explanatory memoranda, testimony, and depositions of D. T. Corbin, C. C. Puffer, Reuben Tomlinson, William L. Bradley, and Andrew J. Coe, now on file in this office and in evidence before the court in the case of William L. Bradley against The Marine & River Phosphate Mining and Manufacturing Company of South Carolina, omitted in the transcript furnished by the clerk of the circuit court for the district of South Carolina to the clerk of the Supreme Court of the United States.

Given under my hand and seal of said court, at clerk's office in the city of Charleston, S. C., this the 31st day of August, A. D. 1881.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

(Indorsement on cover:) No. 215. The Marine & River Phosphate Mining & Manufacturing Co. et al., appellants, vs. William L. Bradley. Stipulation of counsel and addition to record. Supreme Court U. S., 1881, October term. Filed 13th October, 1881.

FILED
DEC 14 1881

IN THE

Supreme Court of the United States.

APPEAL FROM FOURTH CIRCUIT DISTRICT OF SOUTH CAROLINA.

THE MARINE AND RIVER PHOSPHATE MINING AND MANUFACTURING COMPANY, ET. AL., PLAINTIFFS IN ERROR.

against

WM. L. BRADLEY, DEFENDANT IN ERROR.

ARGUMENT OF SAM'L LORD, JR., FOR PLAINTIFFS IN ERROR.

CHARLESTON, S. C.
WALKER, EVANS & COGSWELL, PRINTERS.
Nos. 3 Broad and 109 East Bay Streets.
1881.

IN THE SUPREME COURT.

THE MARINE AND RIVER PHOSPHATE MINING AND MANUFACTURING COMPANY ET AL. PLAINTIFFS IN ERROR.

against

WILLIAM L. BRADLEY, DEFENDANT IN ERROR.

STATEMENT.

The Marine and River Phosphate Mining and Manufacturing Company of South Carolina was incorporated under the laws of South Carolina, and according to the provisions of an Act entitled an Act to regulate the formation of Corporations, approved 10th December, 1860, and amended 9th March, 1871, (Revised Statutes of S. C., 357.) 1

On the 22d December, 1872, the Company executed its bond to W. J. Gayer, Receiver, binding itself to pay to him $20,000. on the 1st July, 1873, with interest, at the rate of ten per cent. per annum, payable semi annually.

The bond is signed by D. T. Corbin as president.

The bond not having been paid at maturity is alleged to have been "assigned" to Corbin on the 13th May, 1874, by Puffer, who had succeeded Gayer in the office of Receiver, he paying therefor 300 shares of the Company's stock, standing in his name, and on the same day an endorsement was placed upon said bond by which the Company agreed to pay the bond to bearer, *waiving all set off or other defense*, on the 1st January, 1875, with interest at the rate of 12 per cent. 2

This agreement is signed by Corbin as president, he being at that time the owner of the bond, and by Thomlinson as treasurer. It is not under seal.

Subsequently $10,000 was paid on the bond to Corbin.

On the 4th June, 1877, long after the extension of time had expired, the bond was transferred by Corbin to Bradley, the complainant, on the terms mentioned in the letter of Corbin at folios 50 to 52. 3

This suit is brought to enforce payment of the remaining $10,000 from the Company and from certain stockholders, upon an alleged liability imposed upon them by the charter for the debts of the Company and upon the further ground that they are holders of stock, only 50 per cent of which has been paid in.

The only Sections of the Charter bearing on this case are the following :

4 SECTION 22d. "The members of every Company shall be jointly and severally liable for all the debts and contracts made by the Company, until the whole amount of the capital stock fixed and limited by the Company, in manner aforesaid, is paid in and a cetlificate thereof made and recorded as prescribed in the following section."

SEC. 33. "When the Stockholders of such a Company are liable to pay the debts of such Company, or any part thereof, their property may be taken therefor on an order of attachment or on execution against the Company for such debt, in the same manner as on orders of attachment and executions issued 5 against them for their individual debts."

The Marine and River Phosphate Mining and Manufacturing Company was organized about the 15th March, 1870. Its capital stock was fixed at $500,000, and divided into 5,000 shares of the value of $100 each.

The bill charges that of the $500,000 only $250,000 had been paid in up to 28th December, 1872, and "that no other or further sum over and above $250,000 of $50 per share, had at any time since been paid in by the stockholders, (folio 7.)

The bill was filed on 14th July, 1879, and alleges that *at that* 6 *time*—

Lewis Mowry held	125 shares
Pelzer, Rodgers & Co	176 "
George W. Williams & Co.	128 "
Theodore D. Jervey,	125 "
The South Carolina Phosphate Co	410 "
The People' Nat. Bank	113 "

The answer of Mowry, (folio 26) admits the ownership of 75 shares of the par value of ..... $ 7,500 00

The answer of Pelzer, Rodgers & Co. admits the ownership of 176 shares when the bill was 7 filed, but alleges a subsequent transfer. The par value of this stock was $17,600 00

The answer of T. D. Jervey admits ownership of 125 shares as trustee of Mrs. E. H. Jervey the par value of which is $12,500 00

The answer of Geo. W. Williams & Co. admits the ownership of 128 shares, the par value of which is $12 800 00

The answer of the South Carolina Phosphate Company admits the ownership of 400 shares, the par value of which is..... $40,000 00

The Peoples' Bank and A. Canale denied that they owned any of the Stock. 8

The Circuit Judge says (folio 54) :

"It is admitted *that at the date of the filing of the bill* in this cause, Lewis D. Mowry was the owner and holder of 75 shares; Pelzer, Rodgers & Co. of 176 shares; George W. Williams & Co. of 128 shares."

Nothing is said as to the ownership of the other stockholders who were made parties, and no decree is made against them.

It is manifest, then, 1st. That there was due to the Company by the above defendants, respectively, on the day the bill was filed for unpaid subscriptions on the stock held by them, only the following amounts: 9

By Mowry $3,750 00
By Pelzer, Rodgers & Co. 8 600 00
By Geo. W. Williams & Co. 6,400 00

2. That it is not alleged or proved that these defendants, or any of them, were stockholders when the bond was made, payment of which this suit was brought to enforce.

3. That these defendants held, together, only 379 shares of stock, and that 4,621 shares were held by persons who were either not parties or who, being parties, had no decree made against them. 10

Among this favored class of stockholders are W. L. Bradley, the nominal owner of the bond (folio 31), and D. T. Corbin, the real owner, the latter of whom held certainly 300 shares, and according to the testimony of A. J. Coe (folio 90,) and R. Thomlinson, (folio 71), 400 shares, on which there was due to the Company for unpaid subscription in the one case $15,000, and in the other $20,000. (Corbin's testimony, folio 38.) That Corbin was a stockholder when the bond was made, and when it was purchased by him is beyond doubt, for the papers on both occasions are signed by him as President, and there is no doubt that Bradley was a stockholder at that 11

14 time, as his name appears in the grant of the mining right to operate which this Company was formed. Stat., S. C, 381.

The par value of the stock with which the bond for $20.000 is said to have been purchased was, according to Corbin's testimony, at the most, $15.000, only fifty per cent. having been paid in.

12 There is no *direct* testimony as to its *market* value, for it had ceased to appear on the Stock Exchange. Its intrinsic value may readily be inferred from the fact that the Company could not meet its maturing obligations, and was obliged to pay twelve per cent. interest for a few months' forbearance, and from the further fact that this bond is secured by a lien on *all* the Company's property which is considered so inadequate that the complainant has thought it necessary to make the stockholders parties in order to enforce their individual liability, although when the bill was filed the property was still in the possession of the Company, (Bill § VIII, folio 6.)

13 Section 19 of the Charter makes ample provision for calling in assessments to the amount at which each share was originally limited, and Section 20 provides a stringent remedy for enforcing their collection.

The Bill prays:

1st. That the lien of the property described in the bond may be enforced.

2d. That the defendant stockholders "may be decreed to be jointly and severally liable to the complainant for the sum of $10,000 and interest."

3d. That they may be decreed to pay so much of the unpaid subscription upon each share of the stock held by them severally as

14 shall be necessary to satisfy complainant's demand.

In his opinion the Circuit Judge says (folio 60):

"The defendants named as stockholders are, by the charter of the Company, jointly and severally liable for the said sum, and the execution decreed against the Company may, by the terms of the charter, be levied upon their property or the property of either of them."

And the decree is (folio 61):

"That complainant have leave to enter judgment against the defendants for the sum of $10 000, with interest at the rate of twelve

15 per cent. per annum from January 1, 1877."

This was done and execution issued against them jointly for $13,120,50 100.

The above amount of Errors will be found in the brief of my colleague Judge Magruder

POINTS AND AUTHORITIES.

Proposition I.

That the Circuit Judge erred in overruling the objection taken to the jurisdiction of the Court, because this is a suit to recover the contents of a chose in action in favor of an assignee for the recovery of which suit could not have been brought in the Circuit Court if no assignment had been made; the bond having been executed and delivered by the defendant Company to W. J. Gayer, Receiver, who is not alleged in the pleadings or shown in the evidence to have been the citizen of a different State from the obligor.

Beyond doubt the original bond was not transferable by delivery. It was in fact legally payable to Gayer and his successors in office, though by its terms it is payable to Gayer only.

If then it is now a negotiable instrument, it has become so by virtue of the endorsement set out at page 2 folios 3 and 4.

The bond is under seal. The affixing of the seal was not a mere formality, as there is a recognition of the seal in the body of the instrument, by the phrase: "In witness whereof the Company have caused their seal to be hereunto affixed."

The endorsement is an *open* promise, *not under seal.*

If, therefore, the endorsement was intended in any way to vary the terms of the bond, it is a nullity, "for no rule of law is better established than this, that a covenant, under seal, can only be discharged by an instrument of equal force and validity—*quodque dissolvitur eodem ligamine quo ligatur.*" Per Tindal, Ch. J., West *vs.* Blakeway, 3 Scott, N. R., 199.

"In the case of a specialty no rule of law is better established than that such a contract can only be discharged by an instrument of equal force. It is clear that a subsequent parol, that is to say, written or verbal agreement not under seal, dispensing with or varying the time or mode of performance of an act covenanted to be done cannot be pleaded in bar to an action on an instrument under seal for non-performance of the act in manner thereby prescribed."

Broom's Maxims, * 408.

But the object of the endorsement was not to make the bond negotiable, but to estop the obligor from pleading any "set off or other defense" against any subsequent *bona fide* holder. By it the Company promises to any person who may, upon the faith of the promise made, become by purchase or otherwise, the *bona fide* holder of the bond, to pay the same on the 1st January, 1875, without set off or

other defense. If the parties supposed and intended that the effect of the endorsement was to give negotiability to the bond, the words "waiving all set off or other defense," would not have been added, for this would have resulted necessarily from the negotiability of the bond.

And this conclusion will be strengthened if the contract be read by the light of the surrounding circumstances. The bond was at the time in the hands of Mr. Corbin, who had acquired it from a
20 Receiver, who can produce no order for its sale. It had been purchased by the President of the Company for a mere nominal consideration and in his hands was subject to a discount of $20,000 for money then due by him to the Company. No prudent man would, under these circumstances, have purchased the bond from Mr. Corbin for anything like its value, if the Company was at liberty to avail itself of these defenses. To obviate this, and make the bond saleable, the endorsement was made.

But if the parties had intended to make the bond negotiable, the intention could not have been effectuated. The only effect of the endorsement in this view would have been to insert the word bearer
21 into the bond, as if it had been originally payable to Gayer or bearer.

Now it is a well established rule that instruments under seal, even if payable to bearer, are not negotiable.

"Though the instrument possesses all the other requisites of a bill or note, its character, as a commercial instrument, is destroyed, and it becomes a covenant governed by the rules affecting common law securities, if it be sealed."

Daniel on N. S., 27, § 31.

"In some of the States of the United States, sealed instruments for
22 the payment of money are placed by Statute upon the same footing as bills and notes in respect to their negotiability, and the addition of a seal to a bill or note payable to order or bearer in no way impairs its negotiability.

"In others bonds are made transferable, and may be sued upon in the name of the assignee; but the latter takes them, subject to all defenses that were available to the original obligee."

Daniel, 29, § 33.

In South Carolina, where the original bond, the endorsement and transfer were all made, the latter rule prevails, and instruments un-
23 der seal, though in form negotiable, are not transferable by mere

delivery, so as to vest the legal interest in the holder, but must be assigned by an instrument in writing.

A brief reference to the Statutes and decisions of the State will be conclusive of this. In 5 Vol. Statutes at Large, p. 330, will be found an Act passed in 1798. The preamble sets out "that many inconveniences have been experienced from assignees of bonds being compellable to bring suits in the names of the obligees of said bonds," and the enacting clause provided that the assignee of a bond may bring an action for the recovery of the same in his own name, styling himself assignee, &c., provided that the defendant shall not be precluded from setting up any discount, &c., &c. 24

This Act received judicial construction in Smith *vs.* Lyons, State R., 334, and Gilchrist *vs.* Leonard, 2 Bailey, 135. In the latter case the defendant offered in discount two sealed notes of plaintiff, payable to Garland Hardwick, "*or bearer.*" The notes being under seal, and not indorsed by the payee, the Circuit Judge held that the legal interest had not vested in the defendant, and that he could not set them up in discount in this action.

An appeal was taken, and Harper, J., delivering the opinion of the Court, said: 25

"The first question is, whether the defendant could, by delivery, merely acquire a legal title to the obligations mentioned, so as to maintain an action on them in his own name. This I take to be settled in the case of Smith *vs.* Lyons, State R., 334. That, indeed, was the case of a promissory note not payable to order or bearer, but I think the decision applies with at least equal strength to an instrument of this sort. At common law no specialty was assignable, though made payable to assigns, or to order or bearer. No contract was transferable but under the law merchant. Our Statutes make specialties and unnegotiable notes for the payment of money assignable, and it has been decided that the assignment must be by writing." 6

The Act of 1798 was repealed by the Revised Statutes, but its provisions were incorporated into the Revised Statutes 594, § 135.

There is nothing in these decisions in conflict with the decisions of this Court holding that coupon bonds are negotiable. Those decisions rest upon the ground "that such securities had been treated as negotiable by the commercial usages of the whole civilized world, and received the sanction of judicial recognition of nearly every State in the Union."

This is wholly inapplicable to the present case, no attempt having been made to establish such usage. 27

If, then, the plaintiff, Bradley, is the lawful holder of the bond, he has become so, not by virtue of the endorsement, but by virtue of the blank assignment placed by Puffer upon it when it was assigned to Corbin.

The plaintiff is, therefore, an assignee of the bond, and the case must be governed by the rule laid down in Bradley *vs.* Rhines, Adm'r, 8 Wallace, 393; Morgan *vs.* Gay, 19 Wallace, 82.

PROPOSITION II.

28

That the endorsement placed upon the bond is void, because made in violation of the rules of conscientious fairness, which the law imposes upon one who occupies a fiduciary relation, and is dealing with the subject matter of his agency and with the party whose interest is confided to his care.

In Twin Lick Oil Company *vs* Marbury, 91 U. S., 588, this Court says: "That a director of a joint stock corporation occupies one of those fiduciary relations, where his dealings with the subject matter of his trust or agency and with the beneficiary or party whose interest is confided to his care, is viewed
29 with jealousy by the Courts, and may be set aside on slight grounds, is a doctrine founded on the soundest morality. * * * It is very true that as a stockholder, in making a contract of any kind with the corporation of which he is a member, is, in some sense, dealing with a creature of which he is a part and holds a common interest with the stockholders, *he is properly held to a larger measure of candor and good faith* than if he were not a stockholder. So when the lender is a director * * * if he becomes a party to a contract with this company, his obligation to *candor* and *fair dealing* is increased in the precise de-
30 gree that his representative character has given him power and control derived from the confidence reposed in him by the stockholders. If he should be a sole director, or one of a small number vested with certain powers, this obligation would be still stronger and his acts subject to a more severe scrutiny, and their validity determined by more rigid principles of morality and *freedom from motives of selfishness.*"

Tested by these principles it is clear that the contract embodied in this endorsement is void. Even if made with a stranger it would have been most oppressive. It imposes a most onerous rate of interest for eight months forbearance, and
31 cuts the company off from setting up any defense however

righteous it may be. It may well be doubted if it is in the power of a board of directors to enter into such a contract even with a stranger. But Corbin was not a stranger. He was a stockholder, a member of the board of directors, and President of the company. Now, did he in this transaction exercise that "*candor and good faith*" which the law requires? The evidence proves just the reverse. It will be noticed that the name of the "holder" is carefully left out of the endorsement. This is 32
itself a most suspicious circumstance; and the facts in evidence leave no room to doubt that this was the result of design, not accident.

The bond was obtained from the Receiver and the stock should have been transferred directly to him. But this was not done. Mr. Corbin says: "I then assigned three hundred shares of my own stock in the company to A. J. Coe, * * * he (Coe) transferred the stock on the books of the company to himself, took out new certificates of stock in lieu of the old, and then endorsed his name upon the back of the new stock, signing 33
his power of attorney to transfer in blank, and delivered the same to me to deliver to Puffer for said bond. In consideration of this the Receiver endorsed his name upon the back of said bonds and delivered the same to me." And in concluding this matter Mr. Corbin said to Mr. Coe "I will *consider* that the title to the bond first passed to you and then from you to me."

The question is obvious, why all this indirection? What purpose could it have had, except to conceal Corbin's connection with the purchase? That this purpose was accomplished there is no doubt. No notice of the change in the ownership of the bond appears in the Company's records. No report was ever 34
made of it. No one of the directors has said he knew of it, and Mr. Robertson, one of the directors, says he, as one of the directors, did not know of and did not acquiesce in the transfer. Mr. Corbin says, "at a meeting of the board of directors, I informed them that this bond, formerly held by Puffer, Receiver, had passed into the hands of *another party*. I am not certain whether I told them I was the owner of it or not *at that time*, (*i. e.* time when resolution authorizing the endorsement was adopted,) folio 21. I did not cause mention to be made in the minutes of the company of my transactions in regard to this bond. *I considered it a private transaction in which the company* 35
had no pecuniary interest." Folio 32.

Let us now apply the other test prescribed, viz: "the validity of such transactions as determined by rigid principles of morality and *freedom from motives of selfishness.*"

It will be seen from the last sentence cited from Mr. Corbin's testimony, that he does not even profess to have been guided by a regard to "the pecuniary interest of the Company." And in this he is fully sustained by the evidence. The contract imposes a ruinous rate of interest and makes it payable *quarterly.*
36 At the time this contract was made all the directors were indebted to the Company for 50 per cent. of their stock. Corbin alone owed it $15,000. He had only to pay this debt and the receiver's demand would have been met. But this was not all. The amount due on account of unpaid capital stock, was $250,000. A general call of 8 per cent. would have paid the bond. Ordinary prudence and good faith would have suggested this course. Not to make the call was, under the circumstances, a violation of the trust held by the President and Directors, both for their stockholders and the Company. Hatch *vs.* Dana 10, 101 N. S., 214. Instead of this the President of the Company
37 secretly purchases its bond for stock which had cost only $15,000, and was not worth that sum in the market. The result of this felicitous arrangement was to substitute the receiver of an insolvent bank in the place of Corbin as a debtor of the Company and to convert the President from a debtor into a creditor of the Company.

The reason assigned for this change, so injurious to the other stockholders and so beneficial to Mr. Corbin, is the urgency of the Receiver Puffer to have the bond paid. Mr. Corbin says, "some time in March, 1874, C. C. Puffer, Receiver, notified me, and I *think* Mr. Tomlinson the Treasurer, that the bond must be paid."
38 (folio 17). Tomlinson says, (folio 71.) "Payment of said bond had been *requested* by Puffer."

This urgency of Puffer is one of the most singular features of this very singular transaction. No order of Court had been made requiring him to call in the security, at least none has been produced. He did not need the money for distribution, for when he retired from the receivership, "in the winter or spring of 1876," (folio 59,) the $30,000 of stock which he received in exchange for the bond, was still in his hands, (folio 5.) In the "explanatory memoranda" filed with his account, he says, referring to this
39 stock, "that it was taken in payment of the company's note

upon a full statement of the Company's condition." It is difficult to see how the receiver's condition was improved by exchanging the bond of a corporation he believed solvent on which ten per cent. interest had been punctually paid, and which was secured by an unlimited stockholder's liability, for stock in the same company worth only the face of the note, and imposing a liability on the holder of $15,000.

We conjecture that the real reason for the "urgency" will be found in the following testimony of Geo. E. Gibbon, the book- 40
keeper of the company, (folio, 9.)

"The stub certificate No. 294, represents 300 shares of stock transferred by Hardy Solomons, to Receiver of the Bank of the State, on 23d April, 1875.

Certificate stub, No. 295 represents 50 shares of stock transferred on the *same day* by the *same party* to C. C. Puffer."

This, with the 50 shares given to Hardy Solomons, makes up the 400 shares, which Thomlinson, folio 71, and Coe, folio 91, both say were transferred by Corbin to Coe, therein contradicting Corbin, who, at folio 16, says: "I then assigned 300 shares of my stock to A. J. 41
Coe." Further comment upon the "candor and fair dealing," the "sound morality" and "freedom from motives of selfishness" which characterize this transaction is surely unnecessary.

Proposition III.

That W. L. Bradley is not the owner of the bond but only a party to an arrangement made for the use of his name in order that suit might be brought in the United States Court.

Mr. Corbin testifies (folio 26): "I parted with said bond by *delivering it* to William Stone, attorney and counsellor of W. L. 42
Bradley, the plaintiff in this cause, on the 7th June, 1877. I received promise of payment of face value of the bond, less the costs and expenses of collection; the terms upon which the sale was made are expressed in correspondence with W. L. Bradley, which I hereto attach as part of my answer to this question. * * I received ten dollars by check of W. L. Bradley in pursuance of the terms of sale. There are no other terms of sale or no other consideration except as expressed in the correspondence. I have received no other money but the ten dollars." In reply to the question why he parted with the bond, he says: "I believed if I held the bond I would be compelled to litigate the same; and I believed if it passed into the 43
hands of a third person, in good faith, that the Company would pay it

to him, * * * * having no prejudices against him, as I believed; and further, I did not wish to be a party plaintiff in an important suit against the Company I had been so long connected with as President."

The letter referred to in the above testimony will be found at folio 50. It is as follows:

CHARLESTON, S. C, June 4, 1877.

W. L. Bradley, Esq., Boston, Mass.:

44 DEAR SIR: I desire to sell to you a bond which I hold against the Marine and River Phosphate Mining and Manufacturing Company of South Carolina * * * * I value the bond at the amount still due on the face of it, and wish you to pay me that amount for it, but I will require you to pay me for the same, except as below, only when you shall have collected the amount from the Company, and what you shall collect from the Company, less the cost and expenses of collection. * * * I wish you to pay me ten dollars down on account of the purchase money.

Very truly yours,

D. T. CORBIN.

45 This brilliant offer proved so tempting to Bradley that he could not await the slow process of the mail. He accordingly telegraphed on receipt of the letter (7th June, 1877):

"I accept bond on terms you offer; have Stone bring suit immediately."

Now, Stone was Corbin's partner.

Is any argument necessary to show that this arrangement was simply a contrivance to have Mr. Corbin's bond sued in the name of Bradley in order to give jurisdiction to the United States Court?

The objection we desire to make is, that the *transaction,*
46 between Corbin and the plaintiff was fictitious, and not real, and that the title of the bond, therefore, remained in Corbin, and the complainant cannot maintain an action to enforce it.

Corbin, the real owner, is not a party to the suit.

In Smith *vs.* Kernochen, 7 How., 216, the Court says:

"The true and only ground of objection in all these cases, is that the assignor is the real party in the suit, and the plaintiff on the record but nominal and colorable, his name being used merely for the purpose of jurisdiction. *The suit is then, in fact, a controversy between the former and the defendants notwithstanding the conveyance and if both parties are citizens of the same State,*
47 *jurisdiction of course, cannot be upheld.*"

In that case the Court held that there was "an assignment of the mortgage properly executed and founded upon a valuable consideration, which passed the title and interest of the mortgagee to the plaintiff," though the motive which prompted it was to obtain a decision of the Federal Court upon the validity of the mortgage.

"The question, therefore," said the Court, "*is one of proper parties* to give jurisdiction to the Federal Courts; *not of title in the plaintiff.* That would be a question on the merits to decide which the jurisdiction must first be admitted." 48

Jones *vs.* League 18, Howard 76, seems to be decisive of this case. There title to land was made by a citizen of Texas to one League, the plaintiff, in trust to carry on the litigation necessary to settle the title of said lands, and when the litigation was finally determined, to reconvey two-thirds of the land to the grantor, and plaintiff agreed to pay one-third of the expense of litigation.

The defendant pleaded to the jurisdiction on the ground that the plaintiff and defendants were both [redacted]d citizens of Texas. That before commencing suit, plaintiff went to Maryland and 49
other States, and remained absent about four months, and, on his return, brought this suit as a citizen of Maryland, and that the said conveyance was colorable.

To this plea the plaintiff demurred.

Three other pleas were filed, representing that the conveyance was made by Power [redacted] a citizen of Texas, and the real plaintiff in the case to give jurisdiction to the Federal Courts, and that League was a nominal plaintiff.

The Court held that the short residence of League in Maryland, without a *bona fide* intention of changing his citizenship, could give him no right to prosecute the suit. 50

And the judgment below was reversed for want of jurisdiction in that Court.

But in delivering the opinion of the Court [redacted]., justice uses the following language:

"But it clearly appears from the deed of conveyance to the plaintiff by Power, that it was only colorable, as the suit was to be prosecuted for the benefit of the grantor, and the one-third of the lands to be received by the plaintiff, was in consideration that he should pay one-third of the costs and superintend the prosecution of the suit.

The owner of a tract of land may convey it in order that the title 51

may be tried in the Federal Courts, but the conveyance must be made bona fide, so that the prosecution of the suit shall not be for his benefit."

PROPOSITION IV.

52 *That Corbin, having acquired the bond while President, in exchange for stock which had cost $15,000, and was worth far less than that sum on the market, could only recover from the Company the amount actually paid, to wit: the market value of the stock, less the sum of $10,000, which he received from the Company in December, 1876, (folio 23,) and the complainant having acquired the bond after it had become dishonored, takes it subject to all the equities to which it would have been subject in the hands of his assignor.*

"But whilst a shareholder cannot after the insolvency of the Corporation buy up claims against it and set them off against his liability to unpaid stock, there seems to be no very clear
53 reason *unless he is a director or otherwise in a fiduciary relation* with the Company for prohibiting him from buying up claims against the Company at a discount and proving them as a creditor at their par value. * * * * * Grave doubts, however, surround this subject. We have seen that stockholders in general are treated as privies of the Corporation, and a tendency is discovered to treat them as occupying towards the Corporation a relation in some sense fiduciary."

Thompson's Liability of stockholders, § 394.

54 "Those directors, constituting the Executive Committee of the Board are, clothed with power to manage the affairs of the Company for the benefit of its stockholders and creditors. * Their position was one of great trust and to engage in any matter for their personal advantage, inconsistent with it, was to violate their duty and to commit a fraud upon the Company."

Wardell *vs.* R. R. Co., 103 U. S., 657.

And this is equally applicable to the complainant, Bradley, who was also a stockholder (Corbin's test, folio 31) and therefore liable to
55 *the Company to the amount of fifty per cent of his subscription.*

Proposition V.

That Bradley and Corbin having both been stockholders when the bond was executed, and being both liable for the debt, are not entitled to recover the full amount of the bond from the other stockholders, but are only entitled to contribution from them in proportion to their interest in the Company.

The charter, we have seen, makes the stockholders "jointly and severally liable for the debts of the Company." By an overwhelming weight of authority this provision has been held to make 56
the stockholders partners.

Thompson, § 31, and cases there cited.

The liability attaches to those who were stockholders when the debt was contracted (§§ 34 and 90), and also to those who subsequently became members. (§ 99) The liability is that of principal debtors (§ 34), and being in the nature of a contract made between the Company, the creditor and himself, is in no manner affected by the transfer of his stock. (§ 99.)

As the creditor, then, who is also a stockholder, is left, as to the other stockholders, to such remedies as are provided by law for 57
adjustment of partnership transactions (§§ 262 and 263), his bill should be for accounting and contribution, and all stockholders should be made parties in order that the proportion of each may be ascertained. (Pollard *vs.* Bailey, 20 Wallace; Terry *vs.* Tubman, 92 U. S., 156.)

As the liability imposed by the Statute is direct to the creditor and is several and joint, it could be enforced by a suit at law against each stockholder severally or against all jointly. If there is any reason then why this suit should be sustined in chancery, instead of a suit at law, it is that the burden may 58
be equalized and properly distributed to the shareholders.

The decree does nothing of the kind. It gives a joint judgment against stockholders representing but a small fraction of the stock; "and leaves the marshal of the Court to collect the whole out of one man, out of two men, out of all the defendants as he pleases." Godfrey *vs.* Terry, 97 U. S. 177, is a direct authority for the position that such a decree cannot stand.

We have thus disposed of the questions growing out of the Statutory liability imposed on the stockholders. The bill seeks also to enforce payment of so much of the unpaid subscription upon each share "of stock held by the defendants severally 59
as shall be necessary to pay the complainants debt."

This prayer of the bill is ignored by the decree. We therefore submit the following propositions without argument.

1. That the liability of the stockholders for unpaid subscriptions is several and not joint. Each stockholder is bound for his own share and no more. No judgment can be rendered against him for what another should pay. Here the decree is joint and not several and makes each of the defendants liable for an amount far in excess of the amount due and unpaid upon
60 his stock.

2. If Bradley is a stockholder, he is only entitled to contribution from his co-shareholders in the proportion that their interest in the Company bears to his—if he is not a stockholder, he cannot maintain a bill in equity until he has exhausted his legal remedy against the corporation by judgment, execution, and return of *nulla bona*.

Tohmpson § 265.

3. If the creditor is a *stranger* and entitled to recover the
61 whole amount out of the stockholders, the remedy provided by Section 33 of charter is exclusive of all others.

Pollard *vs.* Bailey, 20 Wallace, 527.
Knowlton *vs.* Ackley, 8 Cush, 97.
James *vs.* Atlantic Co., 11 N. Bk. R., 390.

If the creditor is at the same time a stockholder, his remedy is in equity.

SAMUEL LORD, Jr.
For Plaintiffs in Error.

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OFFICE SUPREME COURT U. S.
FILED
DEC 14 1881

IN THE SUPREME COURT.

THE MARINE AND RIVER PHOSPHATE MINING AND MANUFACTURING COMPANY, ET AL., PLAINTIFFS IN ERROR.

against

WILLIAM L. BRADLEY, DEFENDANT IN ERROR.

BRIEF OF A. G. MAGRATH, FOR PLAINTIFFS' IN ERROR,

CHARLESTON, S. C.
WALKER, EVANS & COGSWELL, PRINTERS.
Nos. 3 Broad and 109 East Bay Streets.
1881.

IN THE SUPREME COURT.

STATEMENT OF CASE.

The Marine and River Phosphate Mining and Manufacturing Company of South Carolina was incorporated under the laws of South Carolina, and according to the provisions of an Act entitled an Act to Regulate the Formation of Corporations, approved 10th December, 1860, and amended 9th March, 1871.

Under these Acts it is provided that "the members of every Company shall be jointly and severally liable for all debts and contracts made by the Company, until the whole amount of capital stock fixed and limited by the Company is paid in, and a certificate thereof recorded in a designated office. 1

Another provision is, that the whole amount of the debts which any such Company may at any time owe, shall not exceed double the amount of its capital stock actually paid in, and in case of any excess the Directors, under whose administration it occurs shall be jointly and severally liable, to the extent of such excess, for all the debts of Company then existing, and for all that are contracted so long as they respectively continue, and until the debts are reduced to the amount of the capitel stock. 2

The Marine and River Phosphate Mining and Manufacturing Company was organized about 15th March, 1870, for twenty-one years; its capital stock fixed at five hundred thousand dollars, and divided into shares of the value of one hundred dollars each.

The Bill charges that of the five hundred thousand dollars, two hundred and fifty thousand only had been paid in up to the 28th December, 1872. 3

On the 28th December, 1872, the assets of the President and Directors of the Bank of the State of South Carolina, an insolvent corporation, being in the hands of a Receiver, appointed by and acting uuder the authority of the Circuit Court of the State of South Carolina, an application was made in the behalf of the Marine and River Mining and Manufacturing Company, for a loan of $20,000 from the assets in the hands of the Receiver. The order was made by the Court, and the
4 bond signed by D. T. Corbin, President of the Marine and River Phosphate Mining and Manufacturing Company of South Carolina, given to the said Receiver, In the bond was the following statement: " We, the said Company, do further covenant and agree that the above bond constitutes a lien upon the property of the said Company, and that the same is issued under and pursuant to the provisions of Section 39 of Chapter 64 of the General Statutes." The bond was payable to W. J. Gayer, then Receiver.

On or before the 27th January, 1873, W. J. Gayer was re-
5 lieved of the said Receivership, and the assets in his hands temporarily transferred to Jacob Williman, Clerk of the said Court ; and subseqnently on or about the 9th February, 1874, this bond with other assets of the said Bank, were transferred to C. C. Puffer, who was then appointed Receiver in the place of W. J. Gayer.

At the hearing of the case, it was proved that in the case of Dabney, Morgan & Co. *vs.* The President and Directors of the Bank of the State of South Carolina, C. C. Puffer as Receiver, had reported to the Court in which the said cause was
6 pending, that he had received three hundred shares of the stock of the Marine and River Mining and Manufacturing Company, in payment of the said bond.

That subsequently to this, the Hon. D. T. Corbin claimed that he was the holder and owner of the said bond, and demanded payment thereof, which was refused.

And subsequently the bill was filed in this case in the name of W. L. Bradley.

At the hearing of the case the books of the Marine and River Phosphate Mining and Manufacturing Company were
7 in evidence, and by the books it appeared that three hundred

shares of the capital stock of this Company, on the 23d April, 1875, had been transferred to the Receiver of the Bank of the State of South Carolina; and on the same day fifty shares of said Company by the same party transferred to C. C. Puffer, who was then the Receiver.

In the record of the case of Dabnsy, Morgan & Co. *vs.* The President and Directors of the Bank of the State of South Carolina, there was no order of the Court directing or allowing a transfer of the bond given to W. J. Gayer, Receiver, to A. J. Coe, or any other person; the only record being the report of C. C. Puffer as Receiver, that he had taken three hundred shares of stock "*in payment*" of the said bond. 8

There was no report made of any matter relating to these shares, except that now stated, that the bond was paid by these shares.

There was no authority given to the Receiver to convert this bond; originally given to W. J. Gayer as Receiver, and therefore incapable of being transferred without the order of the Court, to A. J. Coe or any one else, or power given to change the same into a bond, transferarble by mere delivery.

And the testimony as to the value of the stock was that it was of greatly reduced value; much less than the amount of the bond. 9

Joseph R. Robertson the acting President of the Company, denies that he knew of or acquiesced in, all the transfers and assignments of the said bond; he admits that he knew of the fact that $10,000 was paid on the said bond, and interest at the rate of twelve per centum per annum was paid for interest from April 1, 1874 to January, 1877. And no other Director unless A. J. Coe was called on to prove his knowledge of the transaction.

It was not proved that to any officer of the Company was it known that any other than the Receiver was the holder of the said bonds or that the increase of the rate of the interest from 7 to 12 per centum, was the price of the forbearance of any other than the supposed owner of the bond, their Receiver. Nor did it appear that any order or direction was asked or given to the Receiver, to collect in that bond, or to stipulate for 12 per centum per annum, as the consideration for forbearance to collect it by suit. 10

It also appeared that at the time when this debt was contracted, D. T. Corbin, A. J. Coe, W. L. Bradley were with others stockholders in the Marine and River Mining Manufacturing Company, and were at the time when the transfers of the bond was made liable themselves in the manner and to the extent mentioned in the charter and under the laws of the 11

State, in the manner, by tlie bill sought to be imposed on the defendants, if that liability exists and can be enforced.

The $10,000 received on account of the bond, was greatly in excess of the value of the 300 shares of stock preferred to the Receiver. The claim made by this bill would, if sustained, give to the officer of a corporation, the right to obtain without the knowledge or acquiesence of the other officers; for his own private benefit and advantage and at the expense of the corporation and to the injury of the stockholders, an obligation which he had obtained for an inconsid-
12 erable amount: the payment of which has sought to be enforced against some who were not stockholders at the time when the said debt was contracted, and in exoneration of those who were stockholders and officers when the debt was contracted, and now claimed for that obligation to be creditors of the Company.

The evidence produced in support of the bill plainly proved that W. L. Bradley was not in fact a party in interest, or the real owner of the bond. That the use of his name was only the result of an arrangement made for that purpose. It was the purchase of a right to bring suit for the recovery of the balance due on the bond.

13 This coupled with the fact of C. C. Puffer having parted with the bond without the authority of the Court of which he was Receiver, and changed the nature of the bond from one assignable only by leave of the Court to one transferable by delivery; with the other circumstances connected with the relation of Mr. Corbin, Mr Coe and Mr. Bradley to the Company, make a case in which a Court will not grant the relief asked for.

ASSIGNMENT OF ERRORS.

14 1. That no title to the bond is proved by the complainant; nor could title to it be made by the Receiver without the order of the Court

2. That the evidence proves that W. L. Bradley is not the owner of the bond; but only a party to an arrangement made for the use of his name, that suit might be brought in the United States Court.

3. That the circumstances connected with the transfer of the bond by C. C. Puffer, Receiver, to A. J. Coe, by him to
15 D. T. Corbin; that 400 shares transferred by D. T. Corbin

to A. J. Coe, by A. J. Coe trnsferred to Hardy Solomon; of these 400 shares, 300 transferred to C. C. Puffer, Receiver; 50 shares transferred to C. C. Puffer in his own right; these shares being of small market value; and exchanged for a bond for $20,000; a perfectly good security for that sum; are sufficient proof of unauthorized and improper conduct of the Receiver in dealing for the transfer of the said bond.

4. That no order of the Court was made; nor can the loose statement of the Receiver be a substitute for it, or supply the place of a record so important; as one requiring the Receiver to collect in a bond, so well secured as was this bond; or the extortion of the high rate of interest in consideration of a pretended forbearance; and the absence of such an order, with the other circumstances in the case, establish the improper conduct of C. C. Puffer as Receiver, and all who dealt with him in the purchase of a bond held by him in his official capacity, and which had been reported by him in the Records of the Court, as paid. 16

5. That while an officer of a corporation may in that capacity deal with that corporation, and matters connected with it and him in his official relations, it is a fundamental rule that such dealings shall be in perfect good faith, so that no advantage by him can be taken, or benefit derived because of his position, to the detriment of the corporation, of which he is an officer, or of its stockholders. 17

6. That in this case it appears that an officer of the corporation for certain shares of its capital stock, half of which was unpaid, became possessed of an obligation of the corporation of which he was such officer, for $20,000. That good faith required such an arrangement when made by the President of a Company, to have been made only after and with the knowledge and assent of the Corporation, its other officers and stockholders. But when the transaction was privately consummated, without the knowledge of the officers and stockholders of the Company, and to its and their manifest disadvantage, it will not be enforced against the Corporation or its stockholders. 18

7. That when it appears that on the said bond for $20,000, $10,000 has been paid by the Corporation, the benefit of which has gone to an officer of the Corporation, without proof that the Corporation knew that such officer was the holder of the 19

bond, and that sum of money was more than the value of the shares with which it is claimed that the bond of the Corporation was purchased, the attempt to obtain another sum of $10,000 from the Corporation, of which the holder was an officer, and from stockholders who were not such when the debt was created and the bond given, with the exoneration from liability of those who now seek to enforce the payment of it, and who created the debt, and were stockholders at the time it was created is inequitable, and will not be enforced.

20 8. That the complainant is not entitled to a standing in Court. He is not the owner of the bond. The evidence in the case shows a purpose to obtain the use of a name by which a case could be made in the Courts of the United States. And the purchase so made is only the purchase of a right to bring suit on a bond.

9. That the nominal plaintiff is before the Court, subject to all exceptions which could be urged against Mr. Corbin, if his name was on the record; and of all matters concerning which Mr. Corbin had or could have had notice, and which
21 would prevent his recovery in this case, the same will have the like effect against the complainant in this case.

10. That the bill cannot be maintained in its form, as a bill against the Company, and a part only of the stockholders. So framed, it is not a mode of proceeding under the statute set forth in the complaint, or for relief by a decree for unpaid subscriptions.

11. That if the complainant could have relief under this bill, it would only be to the extent of being reimbursed the value of the stock transferred; that reimbursement made
22 by contribution from the stockholders, ratably according to the shares; after judgment against the Company, and proof of no property to answer the execution.

12. That if the plaintiff is entitled to any remedy, it is in the Court of Law adequate, and is not entitled to relief in Equity.

ARGUMENT.

The complainant does not show to the Court, that he has any title to the bond which he claims.

23 The bond was in the hands of a Receiver, holding it under

the authority of the Court of Common Pleas of the State of South Carolina.

It was the evidence of the indebtedness of the defendant corporation to that Court of Common Pleas, for money borrowed by that corporation from the assets of the Bank of the State of South Carolina.

It had been reported to the Court as paid. And the mode of payment had been stated, $30,000 of the Company's stock valued at $20,000, "was taken in payment of the same." 24

How valued does not appear, farther than reference is made to a letter from George W. Williams.

The bond is set forth in the bill of complaint. The obligee is named, W. J. Gayer Receiver. It is an immediate, direct obligation to the officer of the Court; no words in it, which authorize that officer to assign or dispose of it.

The only power which the Receiver had, without the order of the Court, was to receive payment of it from the obligor, for that was the right of the obligor.

In the bill of complaint, there is a memorandum added to 25
the bond of an increase of the rate of interest.

There is nothing in the pleadings or the evidence which adds to the bond, the power to transfer, or the evidence of a transfer.

To explain the possession of the bond and the transfer, the bond being the property of the State Court, and the Receiver only "its hand;" the order of the Court was necessary.

This is well understood by the complainant, and the absence of such evidence it is sought to supply, by the statements of the Receiver, whose right to transfer is denied. 26

He says he had the authority of Judge Graham, and that he had it in writing. But he does not say he put that order on the file and placed it as it should have been, if made, with the record.

But the Clerk of the Court testifies that "such orders are invariably recorded; the original order should always be filed; and in this case there is no filing of any such order among the records. The records of the Court will show that no such order was ever made."

It may be taken as not needing any argument, that when an 27

act of an officer of the Court is questioned, because done without authority, and the records of the Court do not contain the evidence of the necessary authority; his statement will not stand in place of that which, if done, is "invariably recorded."

And therefore, *in limine*, the complainant fails in the necessary proof that he is lawfully the owner and holder of the bond, the amount of which he seeks to recover.

28 With such a bond, possession is not proof of title.

But the mode in which the bond came into the possession of the complainant, as is stated in the proof, is still more calculated to confirm the denial of the right of the com-

29 plainant.

The Receiver says he took three hundred shares of the Company, "in payment of the same Company's unsecured note by order of the Court."

Mr. Corbin says the Receiver notified him as the President of the Company, in March, 1874, that the bond must be paid; that he asked whether the Receiver would sell or assign the bond; that being informed by the Receiver that Judge Graham would authorize the sale and transfer of the bond, he told the Receiver that Mr. Coe, of Boston, would give him

30 $30,000 of the stock of the Company for the bond. Mr. Corbin then says: "I then assigned three hundred shares of my own stock in the Company, to A. J. Coe, the par value of the same being $100 per share, and delivered the same to him." Mr. Corbin adds: "he, (A. J. Coe,) transferred the said stock on the books of the Company to himself, took out new certificates of stock in lieu of the old, and then endorsed his name upon the back of the new stock, signing the power of attorney to transfer in blank, and delivered the same to me to deliver to Mr. Puffer for said bond." In consideration of this,

31 the Receiver endorsed his name as Receiver, upon the back

of said bond and delivered the same to me." And in concluding the matter, Mr. Corbin said to Mr. Coe, "I will consider that the title to the bond first passed to you, and then from you to me."

This stock transferred to the Receiver, was transferred by Hardy Solomons. How he came into the transaction, when or why, we do not know; but certain it is, that for some reason, Mr. Coe preferred the transfer to be made by Hardy Solomons, rather by himself; and in the same manner Mr. Corbin preferred that the Receiver should believe the purchaser to be Mr. Coe rather than he. 32

Mr. Coe, in his testimony, says: "I learned that Mr. Puffer, as such Receiver, had the bond of the Company, and would sell it for stock of the Company at a certain price. I purchased the stock of Mr. Corbin—to the best of my recollection, four hundred shares—and with this stock purchased the bond. I sold the bond to Mr. Corbin. I paid him for the four hundred shares with the bond. Mr. Coe adds: "I was then a Director of the Company." 33

So that Mr. Corbin, the President of the Company, agrees with the Receiver for the sale of the bond to Mr. Coe; sells his stock to Mr. Coe, who, with it, in some manner through Hardy Solomons, transfers the stock to the Receiver; who puts his name on the back of the bond as Receiver; delivers it to Mr. Corbin for Mr. Coe; and he pays Mr. Corbin for the stock said to be sold to him, with the bond so obtained from the Receiver. 34

And the supplement is found by a transfer through Hardy Solomons, on the same day of fifty shares to Mr. Puffer in his individual capacity.

The bond bears date the 28th December, 1872, with interest, payable 1st July, 1873. Mr. Puffer became Receiver in February, 1874, and on the 2d April, 1874, sold the bond in the manner stated, to A. J. Coe, who, subsequently, about the 20th May, 1874, for "valuable consideration," transferred, assigned and delivered the bond to D. T. Corbin; who, in turn, for "valuable consideration," sold and delivered it to the complainant. 35

When we come to inquire into the circumstances attending the title to the bond and the possession of it by the complainant, they are all peculiar.

On the 4th June, 1877, Mr. Corbin writes to the complainant of his desire to sell him this bond, and the payment to be made only when the amount has been collected from the Company, less the costs and expenses of collection. The complainant is asked to pay Mr. Corbin ten dollars down on
36 account of the purchase money.

The complainant accepts the bonds on the terms offered, and adds "have Mr. Stone bring suit immediately."

And as Mr. Coe bought the bond with Mr. Corbin's stock and paid for the stock with the transfer of the bond to Mr. Corbin, Mr. Bradley buys the bonds from Mr. Corbin and is to pay only with the moneys to be collected from the Company for the bond, Mr. Corbin says, "I received promise of payment, less the costs and expenses of collection," and he states the reasons which led him to transfer the bond to the
37 complainant. "I believed (he says) if it (the bond) passed into the hands of a third person in good faith, that the Company would pay it without a long and tedious litigation."

It was then to expedite the payment of the bond by the Company that it was transferred to the complainant, and he to pay Mr. Corbin for it only when and for the net amount which, the Company might pay. In plain language, for this suit he let Mr. Corbin have the use of his name. Was this a transfer in good faith?"

We have so far seen that no legal title or lawful possession
38 of the bond was in the complainant so far as the title or possession could be derived through the Receiver; and we have also seen the circumstances connected as they were with this transfer, the concealment of the real purchaser, the disguised transfer of the stock, the evident mistake of Mr. Corbin in narrating the progress of the arrangement, the unexplained intervention of Hardy Solomons and the significant, contemporaneous transfer to the Receiver of fifty shares for his private use.

In the Circuit Decree there is a striking misapprehension
39 and mistake of facts. "The authority (says the Circuit Judge)

if he (the Receiver) had any, was derived from the Court of Common Pleas, whose officer he was." And further, the Circuit Judge adds:

"But it appears that the sale and transfer of said bond has been approved by the Court of Common Pleas for Charleston County." This misapprehension of the testimony and mistake of fact is perfectly patent unless the Circuit Judge considered that the statement of the Receiver was equivalent to the record itself, and no rule required that which must be matter of record to be produced as such, if the party whose justification depended on the record, would say he had it, but could not produce it. In the record of the case in the State Court, it does not appear that the sale and transfer of the bond was approved; on the contrary there is no evidence that the Court ever knew of the sale and transfer of the bond.

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And this now leads us to consider the effect produced on such a transaction because of the official relation in which the real purchaser stood to the Corporation and its stockholders.

We have seen that Mr. Corbin was in fact the party to whom the Receiver made the transfer of the bond. That he represented Mr. Coe as the party who would purchase the bond from the Receiver. That he pretended to sell certain shares of the stock of the Company to Mr. Coe. And that shares so transferred in the name of Mr. Coe were, he says, by him handed to the Receiver. We have seen that either this was not so or that for some reason it was considered advisable to interpose between Mr. Coe, who was a Director of the Company, and the Receiver, in the transfer of these shares, some third person, and Mr. Solomons so appears in the transactions We have seen that on the same day when these shares were transferred by Mr. Solomons to the Receiver, fifty shares were by the same person transferred to the private account of

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the Receiver. We have seen that the cause assigned for the transfer of the bond was the urgency of the Receiver to have it paid, and the inability of the Company to pay it. That the bond was due on the 1st July, 1873, and was amply secured. That C. C. Puffer was made receiver in February, 1874, and in April following the bond was transferred to Mr. Coe, and in the May succeeding to Mr. Corbin. That the forbearance of the Receiver said to be so necessary for the Company, was
44 purchased by the Company at an increase of the rate of interest to 12 per cent. and the obligations of the Company to pay this interest was made on the 13th May, 1874, when Mr. Corbin had possession of the bond. And that the forbearance to press for the payment of the bond was extended only to the 1st January, 1875, an extension of only eight months. That in the obligation of the Company to pay this increased rate of interest for so limited an extension, no mention is made of the name of the holder of the bond; that not a word in that obligation suggests the fact that the Receiver had
45 parted with the bond, and the President of the Company was the holder.

The information of the pressure for payment of the bond was known to the Directors of the Company only as coming from the Receiver, and when the change was made in the control of the bond, no notice of it appears in the records of the Company; no report was ever made of it; no approval of it asked; no one of the Directors has said he knew of it; and Mr. Robertson, one of the Directors, in his answer, says he, as one of the Directors, did not know of and did not ac-
46 quiesce in the transfer. We know that of the stock transferred, only fifty per cent. of the amount it professed to represent had been paid in. That the stock, therefore, had cost $15,000; that it was not worth that sum in the market; but if so, it was the purchase of a claim against the Company by its President for an amount greatly less than the amount now claimed in this bill; and the purchase was in the mode proposed, which it cannot but be supposed, would have been arranged for the benefit of the Company.

In such a case and under such circumstances, can the Com-
47 plainant, who is but the representative of Mr. Corbin, the

President of this Company, enforce against the Company and these defendants, the right that he asserts for payment of this bond? He admits to have received already $10,000; is he still entitled to enforce the whole?

The rule of law which applies in all transactions between an officer of a Company and the Company and its stockholders, is laid down in terms so plain, that when the facts are ascertained the application of the rule is easy.

"The confidence reposed in them (the Directors) cannot 48
be thus abused with impunity; and they cannot use their position to promote their own interest in respect to anything thus intrusted to them, to the prejudice of creditors or other members. Nor is it possible to limit the duty of a Director of a corporation in this respect to the time while he was acting as Director under any special delegation of power, or in attendance at meetings of the Board. He cannot, while Director, divest himself of the knowledge he has acquired in confidence of corporate affairs, or of the value of corporate property, nor be allowed to use it to his own advantage." 49
(Field on Corporations, Sec. 174.)

Much of the language in Jackson *vs.* Ludeling, 21 Wall. R., 616, applies to this case. (Gue *vs.* The Tide Water Canal Co., 24 How. R., 263.)

It matters not that the Receiver might have made the Company pay the whole amount of this bond. It does not consist with the gravity of a legal proposition, to say that if the Company could be forced to pay this bond to the Receiver, it works no injury that the Company should pay it to Mr. Bradley, or Mr. Coe, or Mr. Corbin. The question is, 50
does the Company owe it to the person who claims it? And that it does not, unless all the rules which regulate dealings between a Company, its stockholders and its officers, are set aside, does not require argument.

If, therefore, this Court shall be of the opinion that the evidence shows that the complainant has no proper standing in this Court; that he is not fairly a party in interest; that, in fact, he represents Mr. Corbin, who is truly the owner of the bond; that the complainant, if he purchased anything, only purchased the right to sue; a right which no Court recognizes 51

as entitled to invoke its jurisdiction; that the transfer by the Receiver could only be made under the order of the Court of which he was the Receiver; that his testimony as to a matter properly of record, and to which he should have seen, cannot be received to supply the place of that record; and that the circumstances connected with the relation in which Mr. Corbin stood to Company prevented him from doing what he did, and deriving therefrom advan-
52 tage to himself but disadvantage to the Company and its stockholders; then, for either or all of these reasons the bill would be dismissed.

But there are other matters in this case which will now be considered.

In the bill, reference is made to the 23d Section, Chapter 64 of the General Statutes of South Carolina, in which it is provided, "that the members of every Company shall be jointly and severally liable for all debts and contracts made by the Company, until the whole amount of capital stock fixed
53 and limited by the Company in manner aforesaid, is paid; and a certificate thereof made and accorded as prescribed in the following Section." (Rev. Stat., p. 357.)

This provision only applies to companies organized under the General Statutes.

But this Company professing to be organized under the General Statutes, is in fact, an association of persons who have obtained a license from the State to dig, mine and remove phosphate rock and phosphatic deposits from the navigable streams and waters of the State. And of these licensees
54 specially named, are this complainant and A. J. Coe. (14 Stat. of So. Ca., 380.)

It is not necessary to consider how far a license, which is ever in its nature revocable by the State, can be charged at the will of the licensees, into a corporation; which being a contract with the State, is not revocable.

For under the Act of the Legislature which gave this license, these licensees were in fact, a mining partnership. And whether by virtue of the privilege they had as such licensees, they could in any manner charge that condition in
55 which they had placed themselves, and assume the character

of a corporation, without the assent of the Legislature, could not be maintained, except in the face of adjudged cases.

"A license doth not extend but to him, to whom it is given, and cannot be granted over."

Johnson *vs.* Babcock, 4 J. R., 418.

In Grubb *vs*, Baynard, 2 Wall, Jr., 81, the interest was held assignable because it had "been covenanted that the license might be assigned by deed."

If it were therefore necessary for the argument, the way would be open to the discussion of the power of these licensees to change their position at their pleasure. 56

But this reference to the license is proper for the introduction of this proposition; that here is a licensee regarding the complainant now in the character of a suitor simply; and not as he is the representative of Mr. Corbin; as one of several licensees, and claiming against others of his co-licensees, payment of an obligation, which if binding, is binding on all; but excluding himself from any share in the contribution for that payment. 57

Is not this the case of one of several joint debtors claiming from some of his co-debtors the payment to himself of the joint indebtedness, and excluding himself from all liability?

In the case of these co-licensees, the rule of partnership applies, and the obligation of one partner to a joint debt, would, if the debt were unpaid, be binding on him, although he had withdrawn.

Is the same rule not applicable here? 58

But if these licensees can be considered as having become entitled to the privileges and exemptions of a corporation, in statutes of other States, precisely similar to this, the rule of a partnership liability is maintained, they who were members at the time the debt was contracted, are held bound for it. The liability is enlarged beyond the limits of a partnership, for in addition to the liability of those who were members at the time the debt was contracted, is super-added the liability of those who are members when it is to be enforced. 59

(Thompson on Stockholders, Sec. 99.)

It is so held in Massachusetts.

(Curtis *vs.* Harlow, 12 Mct., R. 3.)

Holyoke Bank *vs.* Burnham, 11 Cush., R. 183.)

And a similar construction is given to a like statute in Maryland.

(Norris *vs.* Wrenshall, 35 Md., 492.)

60 The liability of the shareholder continuing as it does until the debt is paid, is held to be in the nature of a contract with the creditor. Upon the faith of this, persons deal with the corporation. The conclusion therefore is, that "the liability of a stockholder being in the nature of a contract made between the Company the creditor and himself, continues and is in no manner affected by the transfer of his stock."

(Hagan *vs.* Cleveland, 36 Md., 476.)

Matthews *vs.* Albert, 24 Md., 527.)

61 So too in New York, this construction has been given to a like provision in the law of that State.

(Tracy *vs.* Yates, 18 Barb., 182.)

The case of Farrow *vs.* Bivings, 13 Rich. Eq., 29, was the case where a corporation was created with the liabilities of a partnership. One of the stockholders has become a creditor and having transferred his stock, claimed that as such creditor, he was entitled to claim against the other stockholders, without contribution to the amount of the debt he
62 claimed as due to him. But the Court held him bound to contribute ratably for his shares to the debt due to himself.

In the case of Sacketts Harbor *vs.* Blake, 3 Rich. Eq., 225, the Supreme Court of South Carolina, held itself governed in the construction of a statute of the State of New York, by the construction given in the Courts of that State; and in this it said, followed the rule adopted by the Supreme Court of the United States.

If then the liability sought to be enforced in this case is considered as if a question between co-licensees, it would be
63 further affected by the rule in South Carolina, that in claiming

for unpaid capital, the solvent stockholder is not liable for the default of the absent or bankrupt co-stockholders.

(Haslett *vs.* Witherspoon, 2 Rich. Eq., 402.)

And considered as the case of a corporation, and the liability arising under the Section referred, then the stockholders who were such at the time when the debt was created, are liable for contribution, as well as stockholders who have 64
subsequently become such.

If in the case of an ordinary partnership, or a mining partnership, or a claim between co-licensees, where a liability is sought to be imposed and enforced, all who were in the associated capacity at the time when the debt was created, are liable for the payment of it in contribution; from that liability if one of these is a creditor, he cannot, because such, be exempt from that liability.

In the case of the South Carolina Man'g Co. *vs.* Bank, 6 Rich. Eq., 227, the Supreme Court of South Carolina said, 65
"it appears to the Court a misapprehension to suppose that as between the creditors of a corporation and defaulting subscriber any trust exists. The fiduciary relation may be between the creditor and the corporation, but the contract of the subscriber is direct and single. No privilege exists between him as an individual and any creditor of the corporation."

Whatever might be the view which this Court would take of the question, if the creditor were a stranger to the corporation, had never been a stockholder, never in any manner, 66
part of it, a third party so to speak, in the contract between the creditor, the Company and the stockholders; the equity of the rule of contribution as among those who were stockholders at the time when the debt was contracted, would certainly call for its application in a case in which the same person was or claimed to be the creditor; was a stockholder at the time the debt was contracted, and had not as such stockholder, paid up the amount for which he subscribed. We have here the complainants Mr. Bradley, Mr. Corbin, the President, when the debt was contracted, and Mr. Coe, all 67
stockholders; Mr. Corbin the real owner of the debt, Mr.

Coe once nominal owner, and Mr. Bradley, now nominal owner, themselves ,with other stockholders liable for the payment of the debt, relieving themselves from all liability and enforcing the payment of the debt from others.

If the same construction shall be in this case, given to the Section of the Act, this bill must be dismissed for want of parties; or if retained, it must be for the purpose of mak-
68 ing proper parties to it. Or if the complainant be, as it is submitted that he is, the representative of Mr. Corbin, and suing for him, the decree for the complainant can only give to Mr. Corbin the market value of the stock at the time of the transfer, and that amount be made up by contribution, towards which his share must be paid.

And this is rested upon the broad principles, which underlie the relations of officers of a Company, the Company and its stockholders; and which bind those who are in a joint capacity, to contribute ratably among themselves to the dis-
69 charge of that obligation.

And in this, the rule in Hatch *vs.* Dana, 101 U. S., Rep. 205, is not questioned. That was the case of a creditor, who in his claim against the Company, was not affected by any of
70 the equities which are in this case, and have already been presented. And the language of Mr. Justice Bradley, in Marsh *vs.* Burroughs, 1 Woods, 468, that a right to enforce contributions from others, will not delay a creditor in his remedy against one, liability, to that creditor, is clearly not applicable. For in this case, the parties who are liable for such contribution are before the Court, and within its reach.

The questions in the case not only reach the right of the party, in whose name the bill is filed to a standing in Court; or if he has a standing, to his title to the bond; but further
71 his obligation with others to contribute ratably to the pay-

ment of the debt, contracted while he was a stockholder, and from which he seeks to exempt himself and others.

It will be seen that in the Circuit degree it is said that if 72
these defendants are entitled to any relief, it must be had against the Receiver and his sureties. And this it may be assumed, tho' not stated in the Circuit degree, is rested upon the decision of this Court in Koontz *vs.* Northern Bank, 16 Wall, R. 196. But in that case, the facts were altogether different from this. In that case this Court said "the authority conferred by the Court upon the Receiver to sell, carried with it, authority to give to the purchaser evidence of a transfer of title * * the Court intended he should acquire this implied authority by executing deeds where land was sold * 73
* it is sufficient * * that such Receiver was authorized by the Court to sell the property : that the sale was confirmed by the Court." And it was under these circumstances that this Court said, it would regard the condition of "inno cent purchasers," and remit the injured parties to their remedy against the Receiver and his sureties. But in this case there was no authority given to sell, none to transfer the bond, no report of the sale made ; no confirmation of the sale. No fact stated, but that the bond was paid. And the discharge of the Receiver given without any information of this disposition of 74
the bond. In Davis *vs.* Gray, 16 Wall, R. 203, this Court said, of the Receiver," he has only such power and authority as are given him by the Court and must not exceed the prescribed limits."

And lastly we submit, that conceding for the sake of the argument all that the complainant will ask as to other matters, he cannot maintain his right to a remedy under these proceedings:

1. The Act does not afford a joint action or a double remedy against the Company, and those connected with it personally, except in the 35th Section (Rev. Stat., p. 362,) and that only
75 in the case where the officers of the Company are, by the Act, made liable for its debts. And even in that case, they are not joined in the same action, but separate actions are allowed; both of which may be prosecuted at the same time.

2. The complainant in his bill, sets forth certain property of the Company subject to an execution, without any allegation that the same cannot be reached by execution, or that it is not sufficient to satisfy his demand, if for it he is entitled to have it applied to his demand.

76

3. The facts so stated in his bill fail to show that he has not adequate remedy at law; on the contrary, they show that he has, and therefore is not entitled to the aid of equity.

A. G. MAGRATH,
Attorney for Appellants.

OFFICE SUPREME COURT U.S.
FILED
MAR 2 1882

IN THE

Supreme Court of the United States.

APPEAL FROM FOURTH CIRCUIT.

District of South Carolina.

THE MARINE AND RIVER PHOSPHATE MINING AND MANUFACTURING COMPANY, ET. AL., APPELLANT.

against

WM. L. BRADLEY, APPELLEE.

ARGUMENT OF

WM. E. EARLE,

1328 NEW YORK AVENUE,

FOR APPELLEE.

WASHINGTON, D. C.:
NATIONAL REPUBLICAN PRINTING HOUSE,
1882.

1.

The complainant is the legal owner of the bond.

In the answer of the defendant corporation sworn to by Joseph R. Robertson (in pgh. 4 of folio 21) is the statement 1
that "said C. C. Puffer received stock of this company amounting to $30,000 in payment of said debt by order of the Court, whereby said bond has been fully paid and discharged."

And in the answer of the defendant George W. Williams & Co., sworn to by the same Joseph R. Robertson, it is stated "the said C. C. Puffer received stock of their said company, defendants, The Marine and R. Phos. M. and M. Co. of South Carolina, amounting to $30,000 in payment of said bond by order of the Court, whereby said bond has been 2
fully paid and discharged."

And in the answer of Pelzer, Rogers & Co. there is a similar statement and that it was done "by order of the Court."

These corroborate the testimony of Puffer that when the defendant, George W. Williams, fixed the value of the stock Judge Graham directed him (folio 58) "to exchange the bond for the stock, provided the interest was paid to date," and when he entered the transaction under or after the word "paid," (folio 61,) it was merely paid so far as his accounts 3
were concerned. In this folio too the witness testifies to a *fact* which shows that this transaction *was* passed upon and confirmed by the Court which he represented. He swears "My bond (as receiver) was returned to me. Judge Magrath drew the order of discharge, which was signed by Judge Reed." By the stipulation herein, at p. 1, folio 3, it is admitted that Puffer was discharged as receiver "30th of June, 1875," after the transfer of the bond by Coe to Corbin and before this suit was brought.

It would seem that in the face of these facts and the aver- 4

ments in their verified answers these defendants are estopped from saying that Mr. Puffer was not authorized to sell the bond, and from denying "that the sale and transfer of said bond had been approved by the Court of Common Pleas for Charleston County," as stated in the Circuit decree.

If however the receiver had done any wrong, his responsibility was to the Court which appointed him. High on
5 Receivers 269.

If these defendants were really injured their remedy was in the Court making the appointment. High on Receivers 270.

The receiver and the assets were absolutely under the control of the other Court. Idem, 192.

The receiver is presumed to have done his duty, and all of his acts regular and proper, and none of them can be collaterally impeached, assailed, or questioned. Idem, 196.

This stock which counsel speak of as "being of small mar-
6 ket value" is shown by the evidence offered by the solicitor of the defendant corporation (p. 4, folio 10) to have been taken as worth $20,000 on the representations of the defendant George W. Williams:

"Mr. Jervey, defendant's solicitor, put in evidence the report of C. C. Puffer, receiver of the Bank of the State, made to the court of common pleas for Charleston, June 1st, 1875, which is an explanatory report, which is as follows;

7 "The item in Schedule C of $30,000 of Marine and River P. M. and M. Company's stock, valued at $20,000, was taken in payment of the same company's unsecured note by order of the court, after a payment of the interest in cash, upon a full statement of the company's condition, and a letter from Geo. W. Williams, Esq., with regard to the value and condition of the stock. The original loan was made by my predecessor and appears in Schedule A."

At the time of answering, the theory of the defendants, to get rid of paying their bond, was to claim that it had been
8 paid by stock belonging to the defendant corporation and

this idea is about the only intelligible one to be received from the confused statements of folios 30 and 31 of the answer of S. C. Posphate and Phosphatic R. M. Co. on p. 19. In the argument, however, the case shifts. Notwithstading the averments in their answers that the transaction with Puffer was "by order of the Court," the present position is that:

9

This transaction was without authority.

That Puffer was corrupted.

That Coe received 350 shares of stock and only gave Dabney, Morgan & Co. 300.

That Puffer owned 50 shares which were transferred to him by a Mr. Solomon and *this might* have been held by Coe.

10

That Corbin was president of the Company.

That "no" approval "was asked of the Company as to the change of control" of its bond.

That "no one of the directors has said he knew of it," the change. (Magrath's folio 46.)

That Mr. Robertson says "He did not know it."

That the stock paid for the bond is not so valuable as the defendants estimated it when their answers were drawn. 11

Therefore "in such case and under such circumstances the complainant cannot enforce against the Company and these defendants the right that he asserts for payment of this bond. He admits to have received already $10,000; is he still to have the whole?"

That reasoning is too subtle for comprehension.

There are a few simple facts established beyond question 12

by the evidence. and of these that the defendants owe this bond to *somebody.*

The Receiver transferred it in blank making a statement of the transaction in his accounts. (Folio 5, p. 2, folio 10, page 4.)

The Receiver's bond as such was delivered to him and he was discharged by the Court which appointed him.

No one interested in the subject matter of his receivership
13 is impeaching that transaction or has ever been heard to do so and it was made June 7, 1875.

The bond was *not* bought with any funds of the defendants.

The bond *was* bought and paid for by Mr. Corbin's individual means.

Mr. Robertson, Mr. Isaacs, Mr. Coe and Mr. Tomlinson, four directors, then knew that the bond belonged to Mr. Corbin.

The Board of Directors made a new contract and ordered
14 a memorandum made on the bond, and it was done. On page 14 Mr. Robertson answering for the defendant company says: "Yes," to interrogatories one, two and three. The following are the interrogatories as they appear on pages 5and 6 of the Record:

1. Whether the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina did not, in consideration of money loaned, execute and deliver to William J. Gayer, receiver, the bond of December 28th, 1872, described in the first paragraph of the bill?

15 2. Whether the said The Marine and River Phosphate Mining and Manufacturing Company of South Carolina did not, on the 13th day of May, 1874, obtain from the then bearer of said bond an extension of the time of payment thereof till the first day of January following, and were not the terms and conditions upon which said extension were obtained endorsed UNDER THE SEAL of said company upon said bond, in form as alleged in paragraph two of this bill?

3. Whether the said The Marine and River Phosphate Mining and Manufacturing Company of South Carelina did not, upon complying with the terms and conditions set forth in their endorsement of May 13th, 1874, on said bond, re-
16 ceive the forbearance therein mentioned?

The board thus agreed to make the bond payable to "bearer" and to bear 12 per cent. the current rate of interest, and in consideration thereof it got an extension through the stringent season of money in the cotton section and also to December, 1876. They agreed to pay Mr. Corbin just what he could have gotten for his money and just what they would have had to pay if they could have borrowed it elsewhere.

17

The complainant is the "bearer" for value just as much as if he had paid every dollar for it.

When the company made that new contract and made the bond payable to "bearer" any infirmity which might have existed in it was removed. It is urged that the board did not then know that Mr. Corbin owned the bond. It must be remembered that Mr. Robertson is contradicted by his answer to the second interrogatory of the bill and by Mr. Tomlinson and Mr. Coe. After that it was just as if a new bond for a new consideration were given payable to "bearer" on 18
May 13th, 1874. By the contract the company was to be indulged until January 1st, 1875 and the interest was paid, as it fell due in pursuance of the contract up to January, 1877, and one-half of the principal was paid in December, 1876.

II.

The directors made the bond payable to "bearer," knowing that it belonged to Mr. Corbin.

19

Governor Magrath, fol. 9, p. 3, states that Joseph R. Robertson, the acting president of the company, denies that he knew of or acquiesced in all the transfers or assignments of said bond.

Mr. Robertson was not sworn as a *witness.* He swears twice, however—once to the answer of the defendant corporation as its acting president, and again to the answer of George W. Williams & Co., of which firm he was a member. In neither does the language quoted above appear, but I shall have occasion to refer to something which does appear 20

in each of his sworn answers as to the orders of court in connection with this bond.

What Mr. Robertson does say in reference to transfers and assignments appears in his answer (on p. 14 fol. 22,) and *it is* that "the board of directors of this company were not aware that the said Corbin was the holder of said bond," and in this statement he is absolutely, squarely contradicted by the
21 direct testimony of two witnesses. Mr. Coe testified that he knew of it. Also, officially (as a director), that it was an outstanding obligation in 1877, and "that the company were desirous to make the payment of the balance," and that "he knew of the payment of $10,000 about December, 1876, to D. T. Corbin on account of the bond."

Mr. Tomlinson, another director (and Treasurer), swears that he knew of it; also that he had a conversation with Mr. Isaacs, another director, about the time of the transac-
22 tion, and that Mr. Isaacs knew of it; and in fol. 73 Mr. Tomlinson testifies that immediately after the meeting of the board at which the directors renewed and extended said bond (*vide* question in fol. 83) that Acting President Robertson said to him: "I take it for granted this bond belongs to Corbin now." Although in his verified answer Mr. Robertson swears to the want of knowledge by the *whole* board, he did not go upon the stand to contradict Mr. Tomlinson even as to the language imputed to himself.

Nor was Mr. Isaacs sworn.

23 Clearly, then, we are fully warranted in saying that the directors did know that Corbin owned the bond and that, knowing this fact, they made an agreement to pay an increased rate of interest and to make the bond payable to "bearer" in consideration of indulgence through the season of money stringency in Charleston, as shown by the memorandum indorsed on the bond.

In his testimony Mr. Corbin says: "*I think* they (the complainant and Mr. Coe) were stockholders." Except this incompetent opinion there is no allegation or evidence that
24 the complaiuant ever owned a share in this company. Nor

is there any that Mr. Corbin owned any after the transfer of of those which paid for this bond.

There is no testimony as to the value of the shares of this company except that the exchange of the bond for them was made upon the representation of George W. Williams as to them, in which Judge Graham seemed to repose implicit confidence.

The stock transferred by Mr. Corbin to Mr. Coe was liable 25
to assessment, but Mr. Corbin owed the company *nothing*. The statement in Mr. Lord's brief that the bond in Mr. Corbin's "hands was subject to a discount of $20,000 for money then due by him to the company" is wholly gratuitous, *vide* Corbin's uncontradicted testimony, fol. 38 p. 12

"It was subject to further assessment by the Company, but there were *no unpaid* assessments at that time."

III

26
It is said that complainant can only recover as Mr. Corbin could have done, and that he being president and obtaining the bond after it was dishonored could only recover the value of the stock paid for it, less what he has received.

As to this proposition very little need be said, it is based on a purely imaginary state of facts. The River and Marine P. & P. M. & M. Co. is *not* an insolvent corporation and except that on fol. 31 Mr. Corbin says. "*I think* they were stockholders," there is no evidence that Coe or the com- 27
plainant were stockholders at the time Corbin bought the bond, and there is none that Corbin was after the transfer of the stock which paid for the bond.

If they were stockholders then they were merely liable under the statute *to be assessed* by the *Company* (not by the directors,) along with the other stockholders for the balance not previously assessed on their subscription.

IV.

This purchase is in no wise impeachable under the real 28

facts by the official relation of any of the holders of this bond.

The citation of Jackson *vs.* Ludeling 21 Wall 616, upon examination seems very remote. In it a R. R. costing two millions with a grant of several hundred thousand acres of land, was sold for $50,000, at a remote village to satisfy a claim of $720. Not only so, but to accomplish
29 this end a lawyer and local stockholder who had obtained an injunction "was bought off;" the agent of other creditors was corrupted and committed a breach of trust whereby a *bona fide* bid of $550,000 was set aside and a false and fraudulent appraisement was made, all whereof had the cooperation of the acting president. Search will be made in vain for any such facts in the case now before you.

In the purchase of this bond neither Mr. Coe, Mr. Corbin, or Mr. Bradley were dealing with the Company, nor with the Company's property. With the private means of each
30 of them, each in turn bought and paid for a bond of the company from a creditor of the company.

Mr. Corbin having this bond, owning it, having paid for it with his own property and it belonging to him, made a new agreement with the directors, who in contradiction of Mr. Robertson are proven to have known all of the facts.

V.

The complainant then is the real owner of the bond. He
31 owned it by "purchase" from Mr. Corbin. The title passed by delivery to complainant's agent.

This bond does not come within the scope of the intention or of the letter of the inhibition of Sec. 11 of the act of 1789: That (1 Sat., 79; R. S. 629) declares as follows: "Nor shall any district or circuit court have cognizance of any suit to recover the contents of any prommissory note, or other chose in action, in favor of an assignee, unless the suit might have been prosecuted in such court to recover the
32 contents, if no assignment had been made, except in cases

of foreign bills of exchange." This provision clearly contemplates and refers only to such promissory notes as pass only by assignment. And if the note be payable to A. B., or bearer, the circuit court has jurisdiction to enforce payment in favor of a holder who is a citizen of another State, although A. B. is not, the provision of Sec. 11 not applying. This is the distinction drawn in a concise and lucid opinion in Warner *vs.* West, 1 Wood, 495, and it rests on the de- 33
cision of Smith *vs.* Clapp, 15 Peters, 127, in which it is expressly laid down that "an assignment of a note payable to bearer, by delivery only, without indorsement, is not within the 11th section of this act, and it is not necessary to aver the citizenship of the assignee." And that of Young *vs.* Brown, 6 Wheaton, 146, that a suit may be brought in the circuit court by the indorsee against the indorser, whether suit could then be brought against the drawer or not. In such case the indorsee does not claim through an assignment. The same reason applies to a note payable to A. B., 34
or *bearer*, because the *bearer* takes title without assignment. A "note payable to *bearer* is payable to anybody, and is not affected by the disability of the nominal payee to sue." Bank of Kentucky *vs.* Wister, 2 Peters, 318. The cause of action in that case was bank-bills and may have been payable in the first instance to a person incompetent to sue in the courts of the United States.

It corresponded with the Prussian bond, whereby the king acknowledged that the sum mentioned in it was due to any person for the time being a holder, which the English 35
likened to a bank note and held to be negotiable.

10 Can. L. R. 16.

The cause of action in the case at bar is payable to "bearer," and may be sued in the courts of the United States by any "bearer" who is a citizen of another State than that whereof the defendants are citizens.

No fixed terms are necessary to impart negotiability. Any words from which the intention may be inferred will give it a transferable quality as against the party using them.

Edward's on Bills and Promissory Notes, 165. 36

The purpose is here clearly shown by the language used.

Bonds payable to bearer are negotiable securities, and pass from hand to hand by delivery merely. Thomson *vs.* Lee County, 3 Wall, 327. In Lexington *vs.* Butler, 14 Wall, 293, it is expressly held that when the bonds "are made payable to bearer, or indorsed to bearer by the original obligee or payee" they do not fall within the inhibition of
37 Sec. 11 of the act of 1789. The "bearer" is not assignee. He takes title by delivery, and the promise to pay the "bearer" is a direct promise to pay whoever may be the bearer.

This case reaffirms the doctrine laid down in Bushnell *vs.* Kennedy, 2 Wall, 38. It was thus the law stood when the act of March 3rd, 1875, was enacted, which excepted also, "promissory notes negotiable by the law merchant." It is held in Cooper *vs.* The Town of Thomson, 13 Blatchford, 437, that "coupons, when payable to bearer, are promissory
38 notes, negotiable by the law merchant, and possess all the attributes of promissory notes." Also, "a note payable to bearer is payable to anybody who *may become* the holder, and the contract is with the *holder*, and the holder does not acquire title by an assignment, but by delivery."

In White *vs.* The Vermont and Mass. R. R. 21 Howard 575 this Court held that bonds issued in Mass. with the name of the payee left blank could be sued in the Federal Court by a citizen of another State who became the holder.
39 The cause of action in the case here is a bond made payable to "bearer" by an express agreement for a valuable consideration evidenced by a specific endorsement thereon.

But suppose Puffer had not the right to transfer this bond; the board of directors have placed it beyond the power of the defendants to make the objection.

They are estopped from denying whatever may be the legal effect of that indorsement. They owed the bond. The indorsement was ordered by the board. Mr. Tomlinson made it as "by them ordered to be indorsed on the bond,"
40 and they then knew that Mr. Corbin was the owner,

The indorsement of May 13, 1874, made this obligation in contemplation of law a negotiable promissory note, and sec. 135 of the S. C. Code quoted by Mr. Lord expressly exempts such from liability "to any set-off or other defense existing at the time of or before notice of assignment." "A note payable to bearer is payable to anybody. They pass by delivery." Bank *vs.* Wister, 2 Peters.

41

The case of Smith *vs.* Lyons from South Carolina State Reports, (a very old case), referred to in Gilchrist *vs.* Leonard, (2 Bailey 135,) was a single bill payable to an individual without any other words as "assignee," "bearer," or "holder." It was not intended to be traded. The act of 1798 has been repealed and its provisions have *not* been re-enacted, and as expressly decided in the case of Sullivan *vs.* Hellams, 6 S. C., the action *must* in accordance with Sec. 134 of the code "be prosecuted in the name of the real party in interest." The complainant is the real party in 42
interest and as such he alone under the laws of South Carolina could maintain the action.

There is nothing in the general Charter Act of South Carolina which limits the power of making contracts to the use of the seal.

Unless the act of incorporation expressly prescribes the contrary, a corporation, like a natural person, may be bound by the acts of its duly authorized agents by simple as well as sealed contracts. McCullough *vs.* Talladega Ins. Co. 46 Ala. 376.

43

Although the articles of association do not authorize the making of negotiable instruments, yet an indorsee for value may recover free from equities.

3 Chancery Appeals, 758.

Without express authority a corporation has implied authority to make commercial paper.

In re Hercules Assurance Co., 6 Ben. 35;
In re Great Western Telegraph Co., 5 Biss. 36;
Vide also Bank of Columbia *vs.* Patterson, 7 Branch 299; and

44

Fleetman *vs.* The Bank of the U. S., 8 Wheaton 337.

So much now upon Mr. Lord's view that this indorsement on the bond is without seal.

Upon the undisputed authority of the evidence we say the indorsement on the bond *was under seal.*

45 In reply to interrogatory 15, "did you, as treasurer, write or cause the indorsement renewing and extending said bond to be written thereon as it was written, &c." Mr. Tomlinson on page 25, answers, "I did, by direction of the board of directors, *and attached the seal of the company thereto.*"

Mr. Corbin in his testimony, (f. 23, p. 7,) speaking of Mr. Tomlinson the treasurer, says, "he signed said indorsement as treasurer, and I signed it as president, and *he affixed the seal of the company.*"

The defendant company in answer to interrogatory second
46 admits it was under seal.

The Circuit decree finds as a fact that it was under seal.

The contract was under seal then. It was "for a valuable consideration," and upon this the defendant company "hereby promises, waiving all *set-off or other defence*, to pay this bond to *bearer* on the first day of January, 1875."

Now touching the question of real ownership permit me to ask your attention to some other testimony which is more satisfying than mere inferences and argumentative deductions. But two witnesses testify on this subject.

47 The defendants in their cross-examination of Mr. Corbin in response to their first cross-interrogatory elicited the following: "I parted with this bond by delivering it to William Stone, attorney and counsellor of William F. Bradley, the plaintiff in this cause, about the 7th of June, 1877, in pursuance to the order of the plaintiff in the cause. * * In reply to the question 'what led you to part with the said bond?' I consider the question impertinent but I will nevertheless answer it; that the company had refused to pay the bond, and I believed if I held the bond I would be
48 compelled to litigate the same with the company, and I

believed if it passed into the hands of a third person in good faith that the company would pay it to him without a long and tedious litigation, having no prejudice against him as I believed; and, for that I did not wish to be a party plaintiff in an important suit against the company that I had been so long connected with as president."

Now this is the defendant's own testimony. They brought it out in response to a direct question and they are bound 49
by it. There is no evidence in conflict and none explanatory of it.

Mr. Bradley says: "I purchased it from D. T. Corbin."

The bond then was sold to the complainant. Sold unconditionally; sold for a valuable consideration; sold without explanation or collateral agreement; and delivered to the purchaser's agent according to the purchaser's order. It passed by delivery and the sale was absolute, complete and legal.

In McDonald *vs.* Smalley, 1 Peters 620, it is said "if a 50
real conveyance of land has been made to a citizen of another state, who brings his action therefor, it is of no importance that the grantor was induced to convey because he thought his title would be held good in a court of the United States, and bad in a court of the state, nor that the conveyance, though in form absolute, was really but a mortgage."

In Smith *vs.* Kernochen, 7 How. 198, the Alabama Life Insurance Trust Company had filed a bill against Smith to foreclose a mortgage for $7,500 and the Supreme Court of 51
the state had dismissed the bill on the ground that its charter gave no authority to issue the bonds for which the mortgage was given. The company then assigned the mortgage to Kernochen of New York for a loan of $1,000, and he brought his action in the Circuit Court of the United States. Upon this case in the opinion of this Court the following occurs in addition to what is quoted by Mr. Lord.

"The most that can be claimed is, that the company intended a fraud upon the 11th section of the judiciary act, in seeking to obtain a decision of the Federal courts upon 52

the validity of the mortgage between themselves and the defendants, both parties residents and citizens of the same State, using the name of the plaintiff as a cover for that purpose. But admitting this to be so, still, upon general principles, the rights of the plaintiff under the assignment could not be affected by the fraud, unless notice was brought home to him. Till then, he stands on the footing of a *bona fide* purchaser without notice.

53 "But the charge, we think, may also be sustained upon the ground on which it was placed by the court below. For, even assuming that both parties concurred in the motive alleged, the assignment of the mortgage, having been properly executed and founded upon a valuable consideration, passed the title and interest of the company to the plaintiff. The motive imputed could not affect the validity of the conveyance." (7 How., 93.)

VI.

The Directors, it is said, should have made an assessment
54 to pay this bond.

Not only is this very erroneous proposition boldly announced but it is as boldly declared to have been "a violation of the trust held by the President and Directors, both for their stockholders and the Company" not to do so.

Much argument would have been saved by remembering that the president and directors have no power or authority whatever to make an assessment of the stock. The company, and it alone, has by statute (sec. 19,) the power
55 to make an assessment upon the capital stock and it must be done "at a legal meeting called for that purpose." * * "Not exceeding in the whole, the amount at which each share was originally limited."

Not only so, but an assessment was wholly unnecessary. The company could have paid this bond before suit. It did pay off one-half of it out of "its current business transactions," (f 33.) And the company had in bank the money to pay off the balance of it (folio 76, p. 25) inpursuance of the order of the Board of Directors, but another crew
56 boarded the ship in March, 1877, and decided to repudiate

its obligation and diverted its funds to some less proper purpose. (See testimony of Treasurer Tomlinson.

"Ans. to 23d interrogatory. No director objected to the payment.

Ans. to 24th interrogatory. Mr. Corbin frequently, during the months of January and February, A. D. 1877, requested me to arrange for the payment of the balance, of $10,000 principal and the interest due on said bond. 57

The matter was brought to the attention of the directors by me, and no objection was made by them to the payment of said money if it could be raised without serious embarrassment to the company. Arrangements to pay said bond were finally made, and the money actually raised and deposited in bank for that purpose, subject, however, to conditions the fulfillment of which was prevented by the change in the organization of the company, which took place in March, 1877.

Ans. to 25th interrogatory. Mr. Corbin was absent from the city of Charleston, and was in the city of Washington, when said final arrangements were made to pay said balance 58 due on said bond, and I, as treasurer, informed him that I would take up his said bond whenever satisfaction of said bond was entered on the books of the register of mesne conveyances of Charleston County."

VII.

The law applicable to insolvent corporations is inapplicable here.

1. The bulk of the authorities, and especially those cited by Mr. Lord, under his proposition IV, relate to insolvent cor- 59 porations. But this corporation is not insolvent. There is not a tittle of proof which indicates it. It paid half the bond and had the cash in bank to have paid the balance. It couldand would have done so, had not this bright idea of repudiation struck the new board.

In Ogilvie *vs.* Knox, 22 How., 380, when the company had "no property," and "the subscriptions remained unpaid, payment not having been enforced by the company," Mr. Justice Grier, for the Court, said: "If the debts attached are sufficient to pay their demands the creditors need look no fur- 60

ther. They are not bound to settle up all the affairs of this corporation, and the equities between its various stockholders, corporators, or debtors."

In a circuit decision (Marsh *vs.* Burroughs, 1 Wood, 468) Mr. Justice Bradley, speaking as to a debtor who had a remedy over for contribution or indemnity, said: "If a creditor were to be stayed until all such parties could be made
61 to contribute their proportionate share of the liability, he might never get his money."

2. But really there is no evidence whatever that there is any one not a party who is in anywise liable on this bond. And there is no objection for want of parties taken in the pleadings.

Our right to recover here is stronger than the case of Hatch *vs.* Dana, 101 U. S., 205, for instead of having to pursue stockholders for unassessed liability on their stock, their
62 liability is made, *by the statute* under which the defendant corporation obtained existence, "joint and several." We might, therefore, have pursued these stockholders, or any of them, without making the company a party, except that we wished to foreclose the lien.

The case of Pollard *vs.* Bailey, 20 Wall., 520, Terry *vs.* Tubman, 92 U. T., 156, and Godfrey *vs.* Terry, 97 U. S., 177, are totally inapplicable as bearing upon the case at bar, for the simple reason that in them the liability of stockholders was "in proportion to their stock held therein;" whereas,
63 here it is "joint and several," and in nowise proportionate.

3. The stockholders, at maturity of debt, are liable.

In Connecticut the statute provides that "the person and property of the members of said corporation shall at all times be liable for all debts due by said corporation." The Court held that the action was *limited* to those who were stockholders at the time suit was brought.

Middleton Bank *vs.* Magill, 5 Conn., 28.

In Massachusetts the language of a statute fixing the lia-
64 bility was, "The original stockholders, their successors and

assignees," were made "jointly and severally liable;" but the Court added by construction, "being such when suit is brought."

Bond *vs.* Appleton, 8 Mass., 432.

The General Statute of Massachusetts Chap. 38, sec. 16 will be found to correspond exactly with that of South Carolina, and the Supreme Court of that State has expressly decided that this joint and several liability "extends to those who 65
are members when the liability is sought to be enforced."

Curtis *vs.* Harlow, 12 Metcalf 3.

In the absence of construction by the S. C. Courts that of the Court from which the statute was borrowed will be accepted as controlling.

In a Georgia charter the liability is "in proportion to the amount of shares each individual or company may hold in said bank," and the Court fixes the liability at the time suit 66
was brought.

Branch *vs.* Baker, 53 Geo., 512.

4. But it is argued on the authority of Thomson, § 31, that the liability is that of partners. The liability of partners at common law was *joint* only. In a suit to enforce such a liability all had to be joined, and if one died the action died with him and his estate could only be pursued in equity. Section 22 of our statute says the stockholder shall be "jointly and severally liable," &c. The unambiguous terms of the 67
statute can't be stricken out so as to leave the liability joint only. Besides, there is no allegation in the pleadings that there are any stockholders not made parties. No objection made, in any form, of defect of parties.

It is unnecessary that I should cite authorities to show that to sustain an objection for want of parties it must be made formally in the pleadings.

Except that in this testimony Mr. Corbin, speaking of the complainant and Mr. Coe, said: "I *think* they were stockholders," there is not a tittle of evidence that they were, 68

nor that when Mr. Corbin transferred the stock to Mr. Coe, which paid for this bond, he did not transfer all that he had. Nor is there any evidence that there was another share of stock than that owned by the defendants.

Where then, may I ask, is the pertinency or the relevancy of the argument as to contribution and partnership liability?

69 VIII.

The question of "contribution" does not arise.

One of the counsel argues that this is not properly an equity suit; whilst the other says that it is not within the equity jurisdiction unless to settle the question of contribution between stockholders, and much reliance is placed upon Thompson on Liability of Stockholders, § 265. It seems to me that the enforcement of liens in the nature of mortgages has long since become a fixed branch of equity jurisprudence. Be-
70 sides, members of a corporation are continually changing, and *discovery* is an essential element in this suit. Resort to this jurisdiction, too, avoids a multiplicity of suits. On this question I desire no better authority than that cited by my friend—Thompson, § 265, and respectfully ask the consideration of the whole of it.

The South Carolina Courts abolished the distinction between law and equity in forms of practice, but the Supreme Court of Massachusetts under an exactly corresponding statute declares that the liability may be enforced either in law
71 or in equity.

Knowlton *vs.* Ackley, 8 Cushing, 93.

The real difficulty of counsel here is that they suppose the liability of the stockholders to be *proportionable*. In the statutes of some of the States the liability is in *proportion* to the amount of stock. So in a great many charters it is in *proportion* to the amount of stock held at the time the debt is contracted or suit brought. Not so here. The lia-
72 bility is in no wise proportionate. It is a joint and several

liability for the whole. The owner of one share is as liable as the bloated holder of a thousand. By sec. 36 of the act the stockholder's property was subject to attachment just as "upon executions issued against them for individual debts." And sec. 37 of the statute gives to any stockholder who voluntarily or under compulsion, pays a debt for which he is made liable under the provisions of this chapter, "an action against the *company*." And, as if specially to meet and 73
deny all claim to contribution and all pretense of *partnership* liability, there is added: "in which action the property of the company only shall be liable to be taken, and not the property of any stockholder."

IX.

The liability is not that of licensees under a mining partnership.

Judge Magrath at folio 54, p. 4, says: "But this company 74
professing to be organized under the general statute, *is in fact* as an association of persons who have obtained license from the State to dig, mine and remove phosphate rock, &c." The defendant corporation admits in its answer that it "is a body corporate and politic under the law of the State of South Carolina." It also answers "yes" to interrogatory 9, (p. 16) that it organized under the laws of the State as alleged in pgh. 9 of the bill. In view of these admissions it is rather late to say that "this company professing &c. is an 75
association licensed &c." It is true that under the statute referred to (and printed at the end of the brief,) the defendant, George W. Williams and Joseph R. Robertson, together with the Complainant, Mr. Coe, and others, were granted certain mining privileges; but neither do the pleadings allege nor the evidence show the slightest connection between that grant of privileges and the organization of the defendant corporation under the general charter act of the State. If every one of the licenses, and none others, were corporators it would establish no connection. 76

But further, if the privilege of that statute had been granted to this corporation by its own proper legal title it would still be a corporation under the laws of the State. And if a corporation under the laws of the State the whole argument based upon the idea of a mining partnership falls to the ground.

But counsel ignoring the admission of the answer drawn by himself says (folio 57) "The complainant is one of several
77 licenses, and claiming against others of his co-licensees, payment of an obligation, which if binding, is binding on all," and then asks: "Is not this the case of one of several joint debtors claiming from some of his co-debtors the payment to himself of the joint indebtedness, and excluding himself from all liability?"

X.

78 The liability is "joint and several" and absolute.

Having very curiously, or adroitly, confounded this corporation with a mining partnership, my friend has immediately dropped into another error. In order to maintain that the stockholders at the time the indebtedness was incurred are liable he has fallen into the error of supposing that the statutes of Maryland, and New York are similar to ours in fixing the liability of stockholders.

79 Sec. 22 p. 360 of the R. S. of South Carolina reads as follows to wit:

> SEC. 22. The members of every company shall be jointly and severally liable for all debts and contracts made by the company, until the whole amount of capital stock fixed and limited by the company in manner aforesaid is paid in, and a certificate thereof made and recorded as prescribed in the following section.

In Maryland the liability of the stockholders is fixed by section 9 of Chapter 338 of the Act of 1852 and they are
80 "severally and individually liable to an amount equal to the

amount of stock *held by them respectively.*" But not only is there this wide difference in the limitation, but under another section of the same (Md.) statute no shares shall be transferable until all previous calls thereon shall have been paid in. And this fact appears plainly in one of the very cases cited in my friend's brief.

Mathews *vs.* Alberton, 24 Md. 527.

In New York the difference of the provisions is equally 81
marked. Sec. 10 of the act of 1850 provides: "but stockholders shall not be liable to an action therefor before an execution shall be returned unsatisfied in whole or in part against the corporation." The case cited of Tracy *vs.* Yates, 18 Barb. 152 (not 182), will not at all sustain the point made of it, as the New York law expressly required that the subscription should be paid in "money only," and Mrs. Yates had only given *a note* for $5000, and the court held she never became a stockholder.

The distinction pointed out here as to the New York 82
statute is applicable to the Proposition V. of Mr. Lord. "The overwhelming weight of authority," to which he cites the 31st sec. of Thompson on the Liability of Stockholders, will clearly appear on reading it, to rest solely on that class of cases in which the stockholders are exempt from suit until execution is returned unsatisfied against the corporation. The New York case is on the liability of railroads for "wages to laborers and servants," under sec. 10, in which is 83
the provision above quoted from it. And the author expressly says as to the New Hampshire statute, "by which the liability of stockholders was declared to be joint and several or *certain specified* debts.

It is not, and cannot be claimed that our statute has any such provisions.

At this point, too, I beg to call especial attention to the fact that each and every South Carolina case cited was prior to the adoption of the general charter act of that State. To the further fact that each of them is upon some special 84
provision of a special charter.

Also to the further fact that not one of them has the slightest bearing upon the legal issues of this cause.

The case of the S. C. Manufacturing Co. *vs.* The Bank of the State, Wade Hampton *et al.* (6 R. E., 230), has no bearing whatever upon the point to which it is cited. The respondent had a debt secured by mortgage of all of the assets of the Nesbitt Manufacturing Co., the complainant.
85 An unsatisfied judgment creditor preferred the bill, alleging that the bank had two securities, one the assets of the Nesbitt Co., the other the personal liability of stockholders, and that it must elect to exclude the latter. At the end of a long decree discussing many questions as to the policy of the legislation as to corporations, the court says that the Nesbitt Co. which had been chartered not under the general law, but by a special act, had not in its charter any provision making
86 its stockholders liable.

By the very *terms of the charter* in Farrow *vs.* Bivings, 13 R. E., 25, the members of the corporation were made liable as *general partners.*

In Haslett *vs.* Wotherspoon, 2 R. E., 395, certain parties associated themselves in articles to build a theatre, and appointed trustees to transact the business. The trustees incurred indebtedness beyond the subscription, and the Court held the subscribers individually for the debts, though they obtained a charter *subsequent* to the contraction of the
87 debts. I see nothing in that case save the liability of principals for the acts of their agents.

The Sackett's Harbor Bank *vs.* Blake, 3 R. E. 225, is a very simple case under the New York general statutes, in which is this provision: "For all debts due and owing by any such company at the time of its dissolution, the persons then comprising such company shall be individually responsible *to the extent of their respective shares* of stock in said company, and no further." The defendants came within this class, and were held liable in accordance with
88 the terms of the charter as quoted.

There is, however, a S. C. equity case very germain to the main facts here, which seems to have escaped the erudition of my friends. In the Railroad Company *vs.* Claghorn *et al.*, reported in Speer's Equity, 545, the directors of a steamboat company had endorsed the notes of the company and taken chattel mortgages to secure themselves. In the opinion, referring to the directors, the Chancellor says: "It was they who contracted with themselves to be indemnified by a mortgage 89
against their liability as indorsers. * * There is, upon a superficial view, something very startling in this, if the facts be true, and they probably are as to some, perhaps all, of the indorsers; but this alarm will cease when we take into consideration the motives and influences which operate upon men to lend their credit to assist individuals or corporations to pursue their enterprises. * * Now there is nothing, either in law or equity, which forbids a member, or even a director of a corporation, from contracting with it, and like any other individual he has a right to prescribe 90
his own terms, which the corporation are at liberty to accept or reject; and when the contract is concluded he stands in the same relation to the other creditors of the corporation *as any other individual would under the same circumstances.*"

W. E. Earle

APPENDIX.

AN ACT to Grant to Certain Persons therein named and their Associates the right to Dig and Mine in the Beds of the Navigable Streams and Waters of the State of South Carolina for Phosphate Rocks and Phosphate Deposits.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the State of South Carolina does hereby give and grant to the following persons, to wit: Geo. W. Williams, Chas. C. Coe, Jas. H. Taylor, Jos. R. Robertson, Edwin Platt, Wm. Bradley, Jas. Bridge, Jr., Wm. Birnie, and such other they may associate with them, the right to dig, mine and remove, for the full term of twenty-one years, from the beds of the navigable streams and waters within the jurisdiction of the State of South Carolina, the phosphate rocks and phosphate deposits: Provided, That the persons named, and their associates, shall not in any way interfere with the free navigation of the navigable streams and waters of the State, or the private rights of any citizens residing upon or owning the lands upon the banks of the said navigable rivers and waters of the State.

SEC. 2. That this gift and grant is made upon the express condition that said grantees shall pay to the State of South Carolina the sum of one dollar per ton for every ton of phosphate rock and phosphatic deposits dug, mined and removed from the said navigable rivers and waters of the State; And further, That said grantees pay into the Treasury of the State the sum of five hundred dollars as a license fee before commencing business under said grant.

SEC. 3. Before commencing operations under authority of this act, said grantees, and their associates, shall file, or cause to be filed, in the office of the State Auditor a bond in the penal sum of fifty thousand dollars, conditioned that the said grantees, and their associates, shall make true and faithful

returns to said State Auditor, annually, on or before the first day of October, and oftener if required by the said State Auditor, of the number of tons of phosphate rocks and phosphatic deposits dug, mined and removed by them from the beds of the navigable streams and waters of the State, and shall punctually pay to the State Treasurer, annually, on the first day of October, one dollar per ton for every ton of phosphate rocks and phosphatic deposits by them dug, mined and removed from the beds of the navigable streams and waters of the State during the year preceding; said bond to be renewed annually, and approved by the Attorney-General. The books of said grantees and their associates, shall be opened to the inspection of the State Auditor, or agent duly appointed by him for that purpose.

Of Corporations Organized Undrr General Statutes.

Mechanical, Mining, Quarrying and Manufacturing Companies.

Section 1. That three or more persons who shall have associated themselves together by articles of agreement, in writing, for the purpose of carrying on any mechanical, mining, quarrying or manufacturing business, and shall have complied with the provisions of this Chapter, shall be and remain a corporation, under any name indicating their corporate character, assumed in their articles of association, and which is not previously in use by any other corporation or company.

Sec. 2. The purpose for and the place within which such corporation is established shall be distinctly and definitely specified in articles of association, and such corporation shall not direct its operations or appropriate its funds to any other purpose.

Sec. 3. The first meeting of such corporations shall be called by notice, signed by one or more of the persons named in such agreement, stating the time, place and purposes of the meeting, a copy of which shall, seven days at least before the meeting, be given to each member, or published in some newspaper printed in the County where the corporation is to be located.

Sec. 4. If doubts arise whether any such corporation is legally organized, the stockholders, at a special meeting called for the purpose, under their by-laws, or under the preceding section, may, by vote, confirm such organization and all proceedings under it; and by so doing, and depositing one copy of such vote with the Clerk of the Court of Common Pleas for the county where the corporation is located, and one with the Secretary of State, such corporation, and the subsequent acts thereof, shall be held legal and valid, as if the original organization had been legal.

Sec. 2. Every corporation so organized, and its officers and stockholders may make by-laws not repugnant to the laws of the State, with penalty for the breach thereof not exceeding twenty dollars for each offense.

Sec. 6. The business of the company or corporation shall be managed and conducted by a President, or Board of Di-

rectors, a Clerk, Treasurer, and snch other officers and agents and factors as the company authorizes for that purpose.

SEC. 7. The Directors, Clerk and Treasurer shall be chosen, annually, by the stockholders, and shall hold their offices until others are chosen and qualified in their stead. The manner of such choice, and the mode of the choice or appointment of all other agents, factors and officers of the company, shall be prescribed by the by-laws.

SEC. 8. The number of Directors shall not be less than three; one of them shall be chosen President by the Directors, or by the company, as the by-laws shall direct.

SEC. 9. The Clerk shall be sworn, and shall record all the votes of the company in a book kept for that purpose, and perform such other duties as shall be assigned to him. The The Treasurer shall give bond in such sum, and with such sureties as shall be required by the by-laws, for the faithful discharge of his duty.

SEC. 10. At all meetings of the company, absent stockholders may vote by proxy, authorized in writing, but no proxy shall be valid unless executed and dated within six months previous to the meeting at which it is used, if the maker thereof resides in the United States; and no person shall, as proxy or attorney, cast more than fifty votes, unless all the shares so represented by him are owned by one person; and no officer of the corporation, as proxy or attorney shall cast more than twenty votes. Every company may determine, by its by-laws, what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting to constitute a quorum. If the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum.

SEC. 11. The capital stock of every such company, the amount whereof has been fixed and limited by such company according to law, shall remain so fixed, subject to be increased or reduced pursuant to the provisions of this Chapter.

SEC. 12. The amount of the capital stock of every such company not organized shall be fixed and limited by the company, and shall at its first meeting, be divided into shares, of which a record shall be made by the clerk.

SEC. 13. The shares shall be numbered, and every stockholder shall have a certificate under the seal of the corporation, and signed by the Treasurer, certifying his property in such shares as are expressed in the certificate.

SEC. 14. The amount of capital stock of such corporation shall be fixed and limited in its articles of association. The corporation may increase or diminish its amount and the number of shares at any meeting of the stockholders specially called for the purpose; but the capital shall never be less than five thousand, nor more than three millions of dollars, and no share shall be issued for less than its par value.

SEC. 15. Such corporation may, in its corporate name, take, hold and convey such real and personal estate as is necessary for the purposes of its organization; may carry on its business, or so much thereof as is convenient, beyond the limits of the State, and may there purchase and hold any real or personal estate necessary for conducting the same.

SEC. 16. Before such corporation commences business, the President, Treasurer, and a majority of the Directors shall sign, swear to, publish three times in some newspaper printed in the town or county wherein such corporation is situated, and deposit with the Secretary of State, a certificate, setting forth the corporate name and purpose of the association, the amount of the capital stock, the amount actually paid in, and the par value of the shares in the corporation, and shall be a copy thereof with the Clerk of the Court of Common Pleas, in the county wherein the corporation is situated, to be by him recorded in a book kept for that purpose. Within thirty days after the payment of any installment called for by the Directors, a certificate thereof shall be in like manner signed, sworn to, deposited, filed and recorded.

SEC. 17. When the capital stock and shares of any such corporation are increased or reduced, under the provisions of Section 14, a certificate thereof shall be made, signed, sworn to, deposited and recorded in the manner aforesaid.

SEC. 18. Shares may be transferred by the proprietor by an instrument in writing, under his hand, and recorded by the clerk of the corporation in a book to be kept for that purpose. The purchaser named in such instrument, so recorded, shall, on producing the same to the Treasurer, and delivering to him the former certificate, be entitled to a new certificate.

SEC. 19. Every company may, from time to time, at a legal meeting called for the purpose, assess upon each share such sums of money as the company think proper, not exceeding, in the whole, the amount at which each share was originally limited, and such sums assessed shall be paid to the Treasu-

rectors, a Clerk, Treasurer, and snch other officers and agents and factors as the company authorizes for that purpose.

SEC. 7. The Directors, Clerk and Treasurer shall be chosen, annually, by the stockholders, and shall hold their offices until others are chosen and qualified in their stead. The manner of such choice, and the mode of the choice or appointment of all other agents, factors and officers of the company, shall be prescribed by the by-laws.

SEC. 8. The number of Directors shall not be less than three; one of them shall be chosen President by the Directors, or by the company, as the by-laws shall direct.

SEC. 9. The Clerk shall be sworn, and shall record all the votes of the company in a book kept for that purpose, and perform such other duties as shall be assigned to him. The The Treasurer shall give bond in such sum, and with such sureties as shall be required by the by-laws, for the faithful discharge of his duty.

SEC. 10. At all meetings of the company, absent stockholders may vote by proxy, authorized in writing, but no proxy shall be valid unless executed and dated within six months previous to the meeting at which it is used, if the maker thereof resides in the United States; and no person shall, as proxy or attorney, cast more than fifty votes, unless all the shares so represented by him are owned by one person; and no officer of the corporation, as proxy or attorney shall cast more than twenty votes. Every company may determine, by its by-laws, what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting to constitute a quorum. If the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum.

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SEC. 14. The amount of capital stock of such corporation shall be fixed and limited in its articles of association. The corporation may increase or diminish its amount and the number of shares at any meeting of the stockholders specially called for the purpose; but the capital shall never be less than five thousand, nor more than three millions of dollars, and no share shall be issued for less than its par value.

SEC. 15. Such corporation may, in its corporate name, take, hold and convey such real and personal estate as is necessary for the purposes of its organization; may carry on its business, or so much thereof as is convenient, beyond the limits of the State, and may there purchase and hold any real or personal estate necessary for conducting the same.

SEC. 16. Before such corporation commences business, the President, Treasurer, and a majority of the Directors shall sign, swear to, publish three times in some newspaper printed in the town or county wherein such corporation is situated, and deposit with the Secretary of State, a certificate, setting forth the corporate name and purpose of the association, the amount of the capital stock, the amount actually paid in, and the par value of the shares in the corporation, and shall be a copy thereof with the Clerk of the Court of Common Pleas, in the county wherein the corporation is situated, to be by him recorded in a book kept for that purpose. Within thirty days after the payment of any installment called for by the Directors, a certificate thereof shall be in like manner signed, sworn to, deposited, filed and recorded.

SEC. 17. When the capital stock and shares of any such corporation are increased or reduced, under the provisions of Section 14, a certificate thereof shall be made, signed, sworn to, deposited and recorded in the manner aforesaid.

SEC. 18. Shares may be transferred by the proprietor by an instrument in writing, under his hand, and recorded by the clerk of the corporation in a book to be kept for that purpose. The purchaser named in such instrument, so recorded, shall, on producing the same to the Treasurer, and delivering to him the former certificate, be entitled to a new certificate.

SEC. 19. Every company may, from time to time, at a legal meeting called for the purpose, assess upon each share such sums of money as the company think proper, not exceeding, in the whole, the amount at which each share was originally limited, and such sums assessed shall be paid to the Treasu-

rer at such times and by such installments as the company directs. No note or obligation given by the stockholder, whether secured by pledge or otherwise, shall be considered payment of any part of the capital stock.

SEC. 20. If the proprietor of any share neglect to pay a sum duly assessed thereon, for the space of thirty days after the time appointed for payment, the Treasurer of the company may sell at public auction a sufficient number of his shares to pay all assessments then due from him, with the necessary incidental charges.

SEC. 21. The Treasurer shall give notice of the time and place appointed for such sale, and of the sum due on each share, by advertising the same three weeks successively before the sale, in some newspaper printed in the county where the corporation is established, and if there is no such paper then in some newspaper printed in an adjoining county, and a deed of the shares so sold, made by the Treasurer, and acknowledged before a trial justice, and recorded as provided in section 18, shall transfer said shares to the purchaser, who shall be entitled to a certificate therefor.

SEC. 22. The members of every company shall be jointly and severally liable for all debts and contracts made by the company until the whole amount of capital stock fixed and limited by the company in manner aforesaid is paid in, and a certificate thereof made and recorded as prescribed in the following section.

SEC. 23. The President and Directors, with the Treasurer and Clerk of such companies, shall, after the payment of the last installment of the capital stock, make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the President, Treasurer, Clerk, and a majority of the Directors, and they shall cause the same to be recorded in the office of the Register of Mesne Conveyances for the county wherein the corporation is established.

SEC. 24. If a company increase its capital stock, as before provided for in this Chapter, the officers mentioned in the preceding section, after payment of the last installment of such additional stock, shall make a certificate of the amount so added and paid in, sign and swear to the same, and cause it to be recorded in the manner therein provided.

SEC. 25. If any of said officers refuse or neglect to perform the duties required of them in the preceding section, they shall be jointly and severally liable for all debts of the com-

pany contracted after the expiration of thirty days from payment of the last installment and before such certificate is so recorded.

SEC. 26. If a corporation diminish its capital stock, as hereinbefore provided, a certified copy of the resolution or vote for that purpose shall be recorded in the office of the Register of Mesne Conveyances for the county wherein the company is established; and, in default thereof, the Directors of the company shall be jointly and severally liable for all debts of the company contracted after thirty days from such reduction, and before the recording of such copy.

SEC. 27. If any part of the capital stock of a company is withdrawn and refunded to the stockholders before the payment of all the debts of the company contracted previously to the recording of the copy of the vote for that purpose in the office of the Register of Mesne Conveyances, as prescribed in the preceding section, all stockholders of the company shall be jointly and severally liable for the payment of such debts.

SEC. 28. Every corporation organized under the provisions of this Chapter shall file the certificates required of corporations by sections 23 and 24, and the directors shall make, and the President, Treasnrer and a majority of the Directors shall sign, swear to and deposit with the Clerk of the Court of Common Pleas for the county in which said corporation is established or located, within thirty days after the date of the annual or semi-annual meeting next preceding the the date of such certificate, a certificate stating the date of such annual or semi-annual meeting, the amount of capital stock paid in, the name and number of shares held by such stockholders, the amount vested in real estate and in personal esiate, the amount of property owned by and debts due to the corporation, and the amount, as nearly as can be ascertained, of existing demands against the corporation; all as ascertained and exhibited at the date of such annual or semi-annual meeting.

SEC. 29. If the officers of any such corporation violate the provisions of section 2, or neglect or refuse to perform the duties required by sections 16, 17, and 28, they shall be jointly and severally liable for all debts of the corporation contracted during the continuance of such violation, refusal or neglect.

SEC. 30. When the officers of such corporation have failed to perform the duties prescribed in sections 16, 17 and 28,

the certificates therein mentioned may be made, filed and published at any time after such failure, and such officers shall not be personally liable for the debts of the corporation contracted after the requisitions of said sections have been complied with.

SEC. 31. If the Directors of any such company declare and pay any dividend, when the company is insolvent, or the payment would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing and for all thereafter contracted, so long as they respectively continue in office. *Provided*, That the amount for which they shall all be so liable shall not exceed the amount of such dividend, and if any of the Directors are absent at the time of making the dividend, or object thereto, and file their objection in writing with the Clerk of the company, they shall be exempted from such liability.

SEC. 32. No loan of money shall be made by such company to stockholders therein, and if any such loan is made to a stockholder, the officers who make it or assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the company contracted before the re-payment of the sum so loaned.

SEC. 33. The whole amount of the debts which any such company at any time owes, shall not exceed double the amount of its capital stock actually paid in, and in case of any excess, the Directors under whose administration it occurs shall be jointly and severally liable to the extent of such excess for all the debts of the company then existing, and for all that are contracted, so long as they respectively continue in office, and until the debts are reduced to the amount of the capital stock : *Provided*, That any of the Directors who are absent at the time of contracting any debt contrary to the foregoing provisions, or who object thereto, may exempt themselves from liability, by forthwith giving notice of the fact to the stockholders, at the meeting they may call for that purpose.

SEC. 34. If any certificate made or public notice given by the officers of such company, in pursuance of the provisions of this Chapter, is false in any material representation, all the officers who signed the same, knowing it to be false, shall be, jointly and severally, liable for all the debts of the company contracted while they were stockholders or officers thereof.

SEC. 35. When any of the officers of such a company are

liable to pay the debts of the company, or any part thereof, any person to whom they are so liable may have an action against any one or more of said officers, and the complaint in such action shall state the claim against the company, and the grounds on which the plaintiff expects to charge the defendants, personally; and such action may be brought, notwithstanding the pendency of an action against the company for the recovery of the same claim or demand: and both of the actions may be prosecuted until the plaintiff obtains the payment of his debt, and the costs of both actions.

SEC. 36. When the stockholders of such a company are liable to to pay the debts of such company, or any part thereof, their property may be taken therefor, on an order of attachment, or on execution issued against the company for such debt, in the same manner as on orders of attacment and executions issued against them for their individual debts.

SEC. 37. An officer or stockholder of such a company, who voluntarily, or by compulsion, pays a debt of the company, for which he is made liable by the provisions of this Chapter, may recover the amount so paid, in an action against the company, paid for its use, in which action the property of the company only shall be liable to be taken, and not the property of any stockholder.

SEC. 38. Corporations organized for the purpose of manufacturing cotton or woolen goods may, upon the consent of four-fifths of the stockholders, by vote, at a meeting called for that purpose, carry on the manufacture of silk, linen, wax or India rubber goods.

SEC. 39. Any incorporation formed in compliance with the foregoing terms is hereby empowered and authorized to issue bonds, secured by lien on the property of said corporation, to an amount not exceeding the value of the property owned by such corporation, with interest on said bonds payable semi-annually; and any such corporation is hereby authorized and empowered to issue additional bonds to such an amount that the interest thereon, at 8 per cent. per annum, shall not exceed the net income of said corporation.

SEC. 40. The words "corporotion" ane "company" shall be construed as synonymous or interchangeable terms in the preceding sections of this Chapter.

FILED
MAR 2 1892

SUPREME COURT OF THE UNITED STATES.

The Marine and River Phosphate Mining and Manufacturing Company, et al., Appellants,

vs.

William L. Bradley, Appellee.

MR. CAMPBELL FOR APPELLEE.

Each of our learned friends, Counsel for the Appellants, has prefaced his argument by a separate statement of the case.

Each one for himself marshals into line the forces he is to encounter.

Whether this separation signifies disagreement about facts, or is because each adapts his case to his argument, we cannot answer; nor can we venture to say it is only the separate presentation of the same case differently shaded and colored, just as the skilled advocate, by iteration and reiteration of the same thing variously stated, best impresses his cause upon that tribunal where one part settles the facts and the other administers the law.

If we were to follow with separate "*statements*" the Court might find itself listening to the presentation of four different cases instead of the one only from the Circuit.

Considering that there is a very clear and full statement of this case by the learned Judge who tried it below, we shall rely upon it, and abstain from making any other statement.

We think the case tried below, stated by the Judge who tried it, is quite as likely to be accurate and impartial as—
5 and certainly more authoritative than—that of Counsel, who failing to agree between themselves, come separately.

We stand upon the Record: upon the judicial statement of the facts on which the law was and is to be here administered, and we respectfully refer this Court to them as stated by the learned Judge below, at pages 29 to 33 of the transcript. et infra pages 12. 13. 14

If there are mistakes, they may be readily corrected by reference to the testimony.

6 It is greatly in favor of his accuracy, however, that under adverse scrutiny only one alleged error or misapprehension is charged.

That one may as well be met now as at any time.

Judge Magrath, at folio 39 of his argument, says: "In the Circuit Decree there is a striking misapprehension and mistake of facts." "The authority," (says the Circuit Judge) "if he" (the Receiver) "had any, was derived from the Court of Common Pleas, whose officer he was." And further, the Circuit Judge adds: "But it appears that the sale
7 "and transfer of said bond has been approved by the Court "of Common Pleas for Charleston County."

This is what the Circuit Judge says, and it is this which the learned Counsel calls "a striking misapprehension and mistake of facts." "This misapprehension," says Judge Magrath, "of the testimony and mistake of fact is perfectly patent." * * * * * * * * * *

"In the record of the case in the State Court, it does not "appear that the sale and transfer of the bond was *approved;*
8 "*on the contrary, there is no evidence that the Court ever knew* "*of the sale and transfer of the bond.*"

Let us see and settle now, before we go further into the case, what is the value of this correction of the alleged mistakes of the Circuit Judge; what the criticism is worth.

It rests upon the difference between a payment *of* the bond and payment *for* it.

The Court knew that three hundred shares were to be and

were paid for the bond. And that the stock was not paid by the obligors.

Mr. Corbin was careful that it should not have even the 9
appearance of a payment of the debt as it might have coming from him, the President of the Company, and therefore employed COE as a middle-man.

To the Court it made no difference whether the payment was *for* the bond or *of* the debt—whether it was in payment of or for the bond.

The Court knew and directed that the transaction was to be just what it is. See folio 58 of testimony.

If we turn to folio 5 of Judge Magrath's "*statement of the* 10
case," we find as follows: "At the hearing of the case" (this case) "it was proved that in the case of *Dabney, Morgan & Co. vs. The President and Directors of the Bank of the State of South Carolina*, C. C. Puffer, *as Receiver*, had *reported to the Court* in which said cause was pending, that he had received three hundred shares of the stock of the Marine and River Mining and Manufacturing Company in payment of the said bond."

In view of this statement, the Appellants will hardly say 11
"there is *no* evidence that the Court (State Court) ever knew of the sale and transfer of the bond."

Thus, we see, the transaction was undoubtedly known and reported to the State Court; but did that Court approve of it?

Did the Circuit Judge mistake the facts when he said the sale and transfer of the bond had been *approved* by the Court of Common Pleas for Charleston County?

We have seen it admitted that it *was reported* to the 12
Court, and the proof of Judge Bond's statement is to be found at folios 56 to 61 of the testimony appended to the transcript.

The witness, Puffer, was asked (6th interrogatory): "Did you enter said transaction (the sale and transfer of said bond) in your final account as Receiver; and did the consideration received for said bond go into and become a part of the assets of said Bank of the State?"

Answer. "I answer yes to the whole interrogatory." * *

Seventh Interrogatory. "Were your accounts, as Receiver
13 of said bank, *approved* by the Court of Common Pleas for Charleston County, South Carolina, and you duly and finally discharged as such Receiver and your bond cancelled?"

Answer. "Yes; my accounts were *approved* by said Court of Common Pleas; I was duly and finally discharged as such Receiver, and my bond was returned to me. Judge Magrath drew the order of discharge, which was signed by Judge Reed."

This is the uncontradicted testimony before the Circuit
14 Court, and it is sustained, not impaired, by surrounding circumstances.

We venture to ask where is the "perfectly *patent* misapprehension" charged upon the learned Judge?

GROUNDS OF APPEAL.

The Counsel have united on grounds of appeal, or as they prefer to call them—

15

ASSIGNMENT OF ERRORS.

Twelve items may give abundant opportunity for each to choose what is most to his liking.

I shall notice them severally; the first of the *twelve* specifications is:

I.

16 "That no title to the bonds is proved by the Complainant, "nor could title to it be made without the order of the "Court."

To this we answer:

1st. That the bond is a negotiable instrument, payable to bearer. It is in possession of the Complainant.

2d. That the original transaction by which the Receiver transferred the bond is proved to have been made by order of Judge Graham, the then presiding Judge in Common Pleas. See testimony, page 19, folio 59. 17

3d. The Record of the Common Pleas shews, although the written order is missing, that the transaction was afterwards *approved* by the same Court, Judge Reed presiding, and the Receiver discharged and his bond given up. Even if, as alleged, there were no order to do the act, the subsequent approval *cured* the defect.

4th. The Appellants are estopped from denying title after 18
having recognized it by the endorsement making the bond payable to bearer, and changing its character—by increasing the rate of interest from ten per cent. to twelve per cent.—by paying interest periodically for three years—by paying one-half the principal, and by arrangement to pay the balance so far as to actually provide and deposit in bank the money for that purpose. They could not, after all this, deny their contract. *Twin Lick Co. vs. Marbury, 91 U. S. Reports, 587.* Payment was prevented, it is said, by the change 19
in the organization of the Company in March, 1877 (see testimony, folio 75, page 25); about which time a political and civil revolution was completed in South Carolina, and the promises to pay began to fade till they finally ceased.

It was then that *first* the temptation to deny began to be entertained, and the germ of this suit was *then* first planted.

All this may be further discussed when we come to consider the plea to the jurisdiction.

20

II.

The second item of error may be passed over till the same opportunity.

III.

The third item of error invites consideration at this point of time. It is as follows:

"That the circumstances connected with the transfer of "the bond by C. C. Puffer, Receiver, to A. J. Coe—by him
21 "to D. T. Corbin;"

"That four hundred shares transferred by D. T. Corbin "to A. J. Coe; by A. J. Coe transferred to Hardy Solomons. "Of these four hundred shares, three hundred transferred "to C. C. Puffer, Receiver; fifty shares transferred to C. C. "Puffer in his own right. These shares being of small "market value and exchanged for a bond of $20,000, a per- "fectly good security for that sum, are sufficient proof of "unauthorized and improper conduct of the Receiver in
22 "dealing for the transfer of the said bond."

And what then? Puffer was not on trial in the Court below—is not now on trial here. He has been tried in the Court whose "*arm*" he was for this alleged unauthorized and improper conduct, and we have seen that this same conduct was *approved*, his bond surrendered, and an honorable discharge given to him.

What witness says the shares were of small market value? Not one. It is a mere assumption.

23 And if this were all of item number three, we should pass it in silence, because enough has already been said of it; but, there are in the stated "*circumstances*"—which are called sufficient proof—matters which invite attention, and which, *not* belonging together, are here put together, and the use of them is to the prejudice of Mr. Corbin, Mr. A. J. Coe, as well as Mr. Puffer.

Why is Hardy Solomons thus forcibly interjected into this case?

24 There is not a particle of testimony that he had any part in *the* subject-matter of the case, and yet our friends on the other side have made it a point, hoping apparently less direct benefit than indirectly, to strengthen their pretence of improper conduct on the part of Mr. Corbin in his relation to the Company, of which he was President.

It is for this reason, and because it is used as the text out of which to subject him to obloquy, that I notice it.

Bear in mind that some day in March or April, 1874, the purchase and transfer of the bond from Puffer to Coe and Corbin was accomplished. 25

It was certainly before the 13th day of May, *1874*, because on that day the endorsement changing the rate of interest, giving indulgence, making the bond payable to bearer, giving it a new character and making it substantially a new instrument, was put (by the obligors) on the bond.

Now, the testimony of Mr. Geo. E. Gibbon, at the foot of page 3, folio 9, of the testimony, is: "That he is (November 9th, 1878) the book-keeper of the Appellant Company; that the book marked Exhibit A is the stock-book of the Company; that the stub certificate marked No. 294 represents 26 three hundred shares of stock transferred by Hardy Solomons to Receiver of the Bank of the State of South Carolina on 23d of April, *1875*. Certificate stub No. 295 represents fifty shares of stock transferred on same day by same party to C. C. Puffer."

It will be observed that Mr. Gibbon testifies to a transaction twelve (12) months after the transfer by Puffer of the bond, and Coe's delivery of the stock to Puffer.

There is nowhere a particle of testimony nor any *circumstance* to connect the two transactions. 27

There is no cause assigned for a *surmise* that they were parts of the same transaction.

Mr. Corbin being asked in the last clause of the sixth cross-interrogatory (testimony, page 11, folios 34–35):

"Was this the stock that you transferred to A. J. Coe that he transferred to Hardy Solomons, and three hundred shares of which Hardy Solomons transferred to C. C. Puffer, Receiver, on the *sixth of March, 1877*," (*Sic!!*) "eleven 28 months after the alleged transfer to A. J. Coe?"

Mr. Corbin answers: "As to the last clause of the interrogatory, *several facts are assumed that are not true.*

"A. J. Coe transferred no stock to Hardy Solomons within my knowledge, and I have no knowledge of any transfer of stock by Hardy Solomons to C. C. Puffer, Receiver, at *any time*." "If such a transfer ever was made on

the books of the Company, I had no knowledge of the identity of the stock." "The stock delivered to C. C. Puffer
29 *in consideration of this bond I delivered myself, personally,* in the name of Mr. A. J. Coe. What became of this identical stock I have no knowledge." "If it was transferred to Hardy Solomons at all, it must have been done *after it was delivered to C. C. Puffer, Receiver, and not before.*"

There is no other testimony. There is nothing to connect the two transactions. Nothing on which to rest an assumption that *Coe* transferred the stock to Solomons and Solomons to Puffer. And yet, our friends on the other side
30 bravely assume that the transactions are the same, though a year apart. And each has argued as if the assumption were warranted.

One of the Counsel says flatly: "*This* stock transferred to the Receiver was transferred by Hardy Solomons." "How he came into the transaction, when and why, we do not know," "but *certain* it is, that for some reason, Mr. Coe preferred the transfer to be made by Hardy Solomons rather than himself."

Now, this whole statement is a mere assumption. It does
31 not rest upon a tittle of proof.

The stock which paid for the bond was *not* transferred to the Receiver by Hardy Solomons, nor is there anything on record to warrant saying "Mr. Coe preferred the transfer to be made by Hardy Solomons." It is "a striking misapprehension and mistake of facts" to say so; and "this misapprehension of the testimony and mistake of fact is perfectly *patent.*"

The other learned Counsel also takes up the "wondrous
32 tale;" assumes that the transaction of 1875 was the same as that of 1874, and closes his wail saying: "Further comment upon the 'candor and fair dealing,' the 'sound morality' and 'freedom from motives of selfishness' which characterize the transaction is surely unnecessary."

I have dwelt upon this point longer than its small importance, if considered alone, would warrant, because it offers

the opportunity to call attention to the exaggerated tone, if not recklessness, in which the case is continuously presented on the other side. 33

The increased rate of interest, in consideration of indulgence for eight months, is branded "*onerous*," "*ruinous*," "*extortionate*," and the indulgence "*pretended*."

The increase was two per cent. per annum. This for eight months, two-thirds of a year, is two-thirds of two per cent., equal to thirteen mills and a minute fraction, for the "*pretended*" indulgence continued for three years, till the Appellants denied their debt. So, too, of the stock. It is declared a merely "*nominal consideration*," for the ~~bond~~ stock, cost only $15,000—not worth that on the market." 34

We ask the attention of the Court to all this. If there be any testimony as to the cost or the value of the stock, except that Mr. Williams, one of the Defendants, wrote a letter about it, and thereupon Judge Graham directed this stock to be taken for the bond, we would like to have it pointed out. It does not appear on the record.

But the happiest illustration of ready-made assumption in this case is in the assumption as to the endorsement on the bond. 35

"The endorsement," says one of the learned Counsel, "is an *open* promise, not under seal." And thereupon his *Proposition I.* elaborates a learned argument resting on the *assumed* fact.

No matter if the original seal on the endorsement was exhibited at the trial! No matter if the answer of the corporation, on being specially required, had admitted the seal and sealing!! 36

No matter that the President and the Treasurer who put the seal had proved it!!!

The printer had declared otherwise. He had said it. It was enough.

There was no seal on his copy of the transcript.

That was enough to establish the assumption and raise a theory.

It turned out there is a seal to the transcript on file in this Court.

37 That there is also a seal to the original paper in the Circuit Court. The printer had made a mistake. The illusion is dissipated. The theory and the argument are at an end.

A happy illustration of the value of assumptions over facts.

One word more.

The explanatory memoranda appended to Puffer's Report at page 2 of testimony shows that *collateral* securities *were loaned* to Hardy Solomons in at least one instance, by order
38 of the Judge, and it would not have required half so much ingenuity as has been wasted, to surmise and then assume that he may have borrowed the stock Mr. Gibbon spoke of, after it had been transferred to Puffer, and that the transfer by Hardy Solomons was its return to the Receiver.

IV.

The summary of this item is: "No order of Court;" "statement of Receiver—no substitute for it;" "extortion
39 of high interest;" "pretended forbearance;" "improper conduct of Puffer and all who dealt with him;" "bond paid."

There is nothing in all this that has not already been brought to view and disposed of except the word *paid*, used by Puffer when he entered the transaction.

He said *paid* instead of *sold*. He made the entry as if there were a payment, and not a sale.

But he explains that it was a *sale*, and not a payment, and all the testimony on the subject is confirmatory of his ex-
40 planation.

There is no doubt left that the bond was purchased. The entry, then, is of no consequence to the Complainant, or to Coe, or to Corbin. It did not bind them unless true.

Puffer was not their agent.

His books were not theirs. He could not bind them, or any one of them, by entering as a payment of the bond what was a payment for it.

V—VI—VII.

These three assignments of error only concern Mr. Corbin's 41
relations to the Company as its officer. It is claimed they disabled him from purchasing their bond with his own private resources, though the Company had not the means to pay or to purchase.

There can be no serious difference of opinion as to the law which governs the duties of persons in fiduciary positions, such as officers and directors of corporations and trustees generally. The question is, Has Mr. Corbin brought himself within the censure of this law? 42

Appellants charge that he has.

They say: See Mr. Lord's Proposition II (it follows next after the discussion on the want of the seal), that

"*The endorsement placed upon the bond is void, because "made in violation of the rules of conscientious fairness which "the law imposes upon one who occupies a fiduciary relation, "and is dealing with the subject-matter of his agency and "with the party whose interest is confided to his case.*"

In support of this proposition is cited from *Twin Lick Co. vs. Marbury, 91 U. S. Reports*, above cited, a very accurate 43
and well-considered statement of the principles upon which the law in such cases rests.

We accept the whole case,—and are willing to rest upon it for vindication of Corbin's conduct.

As I have already said, there is not and there need not be any difference of views as to the law.

The question is, Has Mr. Corbin brought himself within its censure? Has he violated any of the duties which were incumbent on him as a Director and the President of the 44
Defendant Corporation? The application of the law depends upon the facts.

When they are ascertained, the judgment follows as of course.

And here the report of the presiding Judge who tried the case is of conclusive value.

It relieves us of a discussion otherwise necessary, and sets at rest all conflict of testimony.

"A further defence is made," says Judge Bond, beginning at the foot of page 31 of transcript, "that D. T. Corbin was
45 "at the time of the purchase of said bond from C. C. Puffer "the President of the Defendant Company, and as such "President he was incapacitated to speculate in the paper of "the Company, and so forth; and all benefit and advantage "arising from said purchase of said bond by him inured to "the benefit of the Company, and so forth."

"This defence set up, if sound in principle, which it is "not, does not appear to have sufficient basis of fact to rest "upon."

46 "It is not alleged in the pleadings or proved by the evi- "dence of the Defendants that D. T. Corbin paid less than "twenty thousand dollars in value for said bond, and hence "there is no ground for saying he speculated in the sense of "making profit out of the paper of the Company."

"So far as appears, he paid a full price for the bond, and "it still further appears that he entered into the transaction "to protect the credit of the Company and to save it from "embarrassment, because the Company was not in funds at "the time to pay the bond."

47 "If D. T. Corbin, as the President and agent of the Com- "pany, had purchased said bond with the funds or credit of "the Company, said transaction would now be held to have "been made for the benefit of the Company without doubt, "and the Company would be entitled to any benefit or ad- "vantage, if any, accruing therefrom."

"But as the transaction was made with his own means, "and because the Company had no means with which to "make it, the bond became his own private property, just as
48 "much as the private property was his that he exchanged "for it."

"There was nothing in his position as President that for- "bade the purchase of this bond if he chose to make it."

"But it is further said that the renewal endorsement put "upon the said bond by order of the Board of Directors, on "May 13th, 1874, was null and void, because said Board "was not aware at the time that said D. T. Corbin was the

"holder of said bond, and the same was in fraud of the "rights of stockholders."

"As to this defence, it may be again said it has no suffi- 49
"cient basis of fact to stand on. In the renewal of said "bond, in the form that it was done, the Board of Directors "obtained an indulgence in the postponement of the day of "payment from D. T. Corbin, precisely as they would have "done for anybody else not connected with the Company.

"It is not shown that there was any fraud on his part, "or that any wrong was done by him to the Company or "stockholders.

"So far as said endorsement is concerned, it is evidently 50
"more to the advantage of the Company than it was to Cor- "bin. What did they receive by it? Six months and "a half delay (it was eight months) in the payment of their "bond, which was then nearly two years past due.

"What did they give for that indulgence?

"They increased the rate of interest on said bond two per "cent.—that is, promised to pay the then current bank rate "of interest. They simply agreed to pay Corbin for his "money what they would have been compelled to pay any- "body else, or just what anybody else would have paid 51
"him.

"It is impossible to maintain that such a transaction was "a fraud upon the Company or its stockholders. As to the "fact alleged, that the Directors of the Company did not "know at the time they made the endorsement of May 13, "1874, upon the bond, that D. T. Corbin, their President, "actually owned and held the bond, it is disputed.

"Mr. Reuben Tomlinson, then Treasurer of the Company, "says they did know it; that he knew all about it, and so 52
"did most, if not all, the Directors; that he conversed with "them about it, and that it was regarded as extremely for- "tunate for the Company that the bond had fallen into "friendly hands, and so forth.

"It seems to me quite immaterial how the fact is, and "quite as favorable to the Plaintiff if the Directors did not "know that Corbin held the bond as it would be if they did

"know it. If they did not know it, then it must be assumed
"that they were not influenced by the fact in taking the
53 "action that they did, that they acted impartially and as if
"dealing with a stranger, just as they should have acted.

"As to the validity of the new contract of May 13th,
"1874, renewing and extending said bond, there is no ground
"for questioning it. It was a *bona fide* transaction, made
"by the Board of Directors of the Company with D. T.
"Corbin, then a Director and President, by which the Com-
"pany got further time for payment upon their valid out-
"standing past due bond. The bond being past due, Corbin
54 "was entitled to have the same paid at once. The exten-
"sion of the bond, therefore, by him, may be regarded as a
"loan to the Company.

"That any officer of a corporation may make a valid loan
"to it there is no doubt."

Apply to this statement the doctrine of the Twin Lick Co. above, and there is an end of possible doubt.

Very little need be added to this authorative statement, but that little will be significant.

55 Both Counsel on the other side have referred to the statement of "Mr. Robertson" as if it were testimony in the case. No such witness was examined, and there is no such testimony.

Mr. Joseph R. Robertson was the acting President of the Defendant Corporation, and, as such, signed its Answer.

The Bill had specially interrogated the Corporation as follows (5th interrogatory, page 6):

"Whether the successive transfers and assignments of
56 "said bond of December 28th, 1872, from Wm. J. Gayer,
"Receiver, to Jacob Williman, Clerk of Court; to C. C.
"Puffer, Receiver; to A. J. Coe; to D. T. Corbin; were not
"well known and without objection acquiesced in by the
"officers, to wit: The President and Directors and Treasurer
"of said The Marine and River Phosphate Mining and
"Manufacturing Company, of South Carolina, from the 13th
"day of May, 1874, till the first day of January, 1877; and

"did not said Company pay the interest at the rate of twelve
"per cent. per annum, quarterly, from the first day of April,
"1874, till the first day of January, 1877, to D. T. Corbin; 57
"and also in December, 1876, pay to said D. T. Corbin ten
"thousand dollars on account of the principal of said bond?"

To this interrogatory Mr. Robertson, at page 14, says:

"That, as a Director of the Company at the time, he did
"not know of, nor did he acquiesce in all the transfers and
"assignments therein mentioned; that interest at the rate
"of twelve per cent. per annum was paid on said bond from 58
"April 1, 1874, until January 1, 1877, and also ten thousand
"dollars on account of principal."

Now, this statement of Mr. Robertson, skillfully interpolated, as if testimony in the case, into each of the arguments for Appellants, is made to contradict or gainsay the report of the presiding Judge.

It would, if evidence, raise a conflict of testimony.

But there is no such conflict.

What Mr. Robertson says is not testimony at all. 59

The question was not put to him, but to the Corporation; and the Corporation does not answer it.

Mr. Robertson undertakes to do it for himself personally, and his answer is not under oath—not sworn to.

It is under the seal of the Corporation; nothing more.

All that need be further said is to ask the natural question: How is it, and why, that Mr. Robertson was not called and examined as a witness? He is a man of unimpeachable 60 character, and was, if I may be permitted to say it, in Court during the trial, and we hoped he would be sworn. Other Directors also were at hand and could have been sworn; and why not?

II—VIII—IX.

61 These three items of error run into each other, and are also covered by Mr. Lord's

PROPOSITIONS I—III.

They are in support of the plea to the jurisdiction.

Briefly stated, their purport and scope is that the cause of action is not within the prohibition or the exception in the 11th section of the Act of 1789, nor of the Act of March
62 3d, 1875, regulating the jurisdiction of Circuit Courts, and

"That the Plaintiff is not the owner of the bond, but only "a party to an arrangement made for the use of his name "in order that suit might be brought in the United States "Court."

The objections to the jurisdiction are, it will be observed, two-fold.

One objection is pleaded, and in that way is *in limine* before the Court.

The other objection is not pleaded, but is raised upon the
63 testimony brought out during the trial as to the title of the Plaintiff to the cause of action.

This question has already been partially dealt with and discussed, and will be again taken up; but before that we are now to consider the plea to the jurisdiction.

The words are, "that this Honorable Court cannot have "cognizance of this suit, because it is a suit to recover the "contents of a chose in action in favor of an assignee, for re-
64 "covery of which suit could not have been prosecuted in this "Court if no assignment had been made, for the reason that "the said bond was executed and delivered by the Defend-"ant Company to Wm. J. Gayer, Receiver of the Bank of "the State, a body corporate under the laws of the State of "South Carolina, of which State these Defendants are also "citizens. Therefore these Defendants plead the said want "of jurisdiction in bar," &c., &c.

Simplified, this means that the cause of action is not a negotiable instrument—not commercial paper.

Title did not pass by delivery; nothing more. 65

This plea was filed by special order of Court, on motion without notice to or hearing of the Plaintiff, October 7th, 1878, after answer filed December 22d, 1877, and after replication filed on the 29th June, 1878.

The presiding Judge below says of it: "The plea to the "jurisdiction interposed in this cause, by special permission "after the Defendants had answered and the case was at "issue, is overruled. By the terms of the endorsement of "May 13th, 1874, put on the bond by the Defendant Com- 66
"pany, the said bond became commercial paper, and the "same passed from hand to hand by delivery. It does not, "therefore, fall within the prohibition of the 11th section of "the judiciary Act of 1789." "The authorities upon this "point are ample, and it is unnecessary to discuss them."

Transcript, page 33, folio 60.

It is undoubtedly true that by a current of decisions by this Court and by the State Courts the law is settled that bonds of corporations payable to bearer are negotiable in- 67
struments, which pass by delivery, and come within the law merchant which governs bills of exchange and promissory notes.

The cases of *White vs. Vermont R. R., 21 Howard, 576; Thomas vs. Lee County, 3 Wall, 327; City of Lexington vs. Butler, 14 Wall, 273,* are some of the series which are authority for this settled doctrine applied to bonds of railroad and municipal corporations.

There can be no distinction drawn between such corpora- 68
tions and manufacturing, trading, mining and navigation corporations, who are authorized to contract debts.

No such distinction is attempted here. It is not, as I understand them, claimed by the Appellants that one rule of law applies to one class of corporations and another rule to another class of corporations.

One of their counsel, Mr. Lord, does claim, however, that

the old common law rule still prevails in South Carolina, or, as he puts it, "that instruments under seal, though in form
69 "negotiable, are not transferable by mere delivery so as to "vest the legal interest in the holder, but must be assigned "by an instrument in writing."

And that the holder "takes them, subject to all defences "that were available to the original obligee."

He is correct as to what the law in South Carolina *was*. He is mistaken as to what the law now *is*. And this will appear by reference to the following cases long subsequent to the cases cited by him:

70 *Bank vs. R. R. Co., 5 So. Ca. Rep., 158.*
Langston vs. So. Ca. R. R. Co., 2 So. Ca., 251.
Bond Debt Cases, 12 So. Ca., 250.

The rule in South Carolina is the same as in this Court, and under that rule this cause of action, after the endorsement of May 13th, 1874, became a negotiable instrument, passing from hand to hand by delivering, just as bonds payable to bearer of the City of Charleston or of the South Carolina Railroad.

71 That endorsement gave to it a new character—made it a new instrument. It is a lawful contract between the Defendant Corporation and the bearer of their bond. The Corporation had a right to make such a contract and are bound by it; neither the law nor the Court will disturb it. The Defendants "promised, waiving all set off or other defence, to pay to bearer." They have shewn no cause for being discharged from their promise.

Is it just the same as if the old bond had been surrendered
72 and cancelled and a new one made and delivered, payable to bearer? Bradley took it three years or more after this had been done. He never took it by assignment. He was not the assignee of Gayer. He is not the assignee of Corbin. He is the holder, by delivery, for good consideration. His title is possession lawfully delivered to him. It does not rest upon assignment. It did not pass to him by deed or instrument in writing. It is not within the words or mean-

ing of the prohibition of the eleventh section of the Acts of '89 or '75. His right to the jurisdiction arises by reason of his citizenship. This suit is not "a suit by an assignee to 73
recover the contents of a chose in action in favor of an assignee," but is a suit by the holder of a bond payable to bearer upon which the obligor had, for good consideration, waived all set off or other defence and promised to pay to bearer. The obligor did this, and delivered it for consideration before Bradley took it, without notice of any defence. He is a mere creditor seeking payment of a debt due to him. He is not a stockholder in the Company; an attempt was made to prove him one. 74

Corbin says he *thinks* he was a stockholder when the bond was transferred, more than three years before suit. That is not enough. Defendants had the stock books, and could have proved what was the fact.

If he is not an assignee he is not within the *prohibition* of the eleventh section; if his cause of action is "*commercial paper*," he is within the *exception* of that section.

Counsel on the other side think it necessary that we establish a *usage* before we can maintain suit, except as assignee, and that this view is not in conflict with the decisions of this Court holding that Municipal and Railroad bonds payable to bearer are negotiable, because, he says, those decisions rest upon the ground "that such securities had been treated as negotiable by the commercial usages of the whole civilized world, and received the sanction of judicial recognition of nearly every State in the Union." 75

We do not so understand it. We understand that this Court holds that such securities, namely: promises under seal to pay to *bearer*, are negotiable; and in support of that 76
rule, and as a reason for it, instances the fact of commercial usage as to Railroad, Municipal, State and Government bonds.

It does not mean that while a Railroad bond payable to bearer is negotiable, a like bond of a Mining Company is not negotiable unless a commercial usage as to it is first established.

We think it is the well settled doctrine of this Court that bonds and sealed notes, and the like choses in action, pay-
77 able to bearer, are negotiable—not merely assignable by assignment in writing, but negotiable as by the *Law Merchant*.

We come next to consider the second objection to the jurisdiction, namely: That the Plaintiff, though the nominal, is not the real owner of the bond, and holds it only to bring suit in the United States Court—which the true owner could not bring. It means that the suit is a fraud upon the Court.

As to this objection, the answer in the first place is: It comes too late. It should have been pleaded before issue
78 joined, or afterwards by leave of Court.

Smith vs. Kernochen, 7 *How.*, 216, (Nelson, J.) who cites—
DeWolfe vs. Roland, 1 *Peters*, 417.
Evans vs. Gee, *same*, 8 *a.*
Sims vs. Hundley, 6 *How.*, 1.

And next, the charge has not been sustained by any fact. There is nothing to shew that Bradley is not the *bona fide* holder for valuable consideration, and it is shewn that he has
79 upon the face of his contract a clear absolute legal title.

This whole subject has been thoroughly discussed and adjudicated, till now the rule is fully settled. The earlier cases are *Maxfield's Lessee vs. Levy*, 2 *Dall.*, 385, *and* 4 *Dall.*, 330; *Hurst's Lessee vs. Neil*, 1 *Wash. C. C. R.*, 70–81.

These cases were reviewed by Judge Story in *Briggs vs. French*, 2 *Sumner*, 255 *to* 260, and he controverts them. What Judge Story says in that case would fully sustain the contract between Corbin and Bradley, even if it had borne
80 upon its face that he holds for the use of Corbin; provided, the absolute legal title passed and was irrevocable. So, too, the case of *Bonafee vs. Williams*, (in this Court) 3 *How.*, 574, is authority "That the legal holder of a promissory note payable to bearer, if capable (by citizenship) of suing in a Circuit Court may do so without reference to the citizenship of his *cestuis que trust*, for whose use the suit is brought."

"If a real conveyance has been made to a citizen of another State, who brings his action there, it is of no importance that the grantor was induced to convey 81
because he thought his title would be held good in a Court of the United States, and bad in a Court of the State, nor that the conveyance, though in form absolute, was really but a mortgage." *McDonald vs. Smalls, 1 Peters, 621.*

Again, at page 624 same case: "The motives which induced him to make the contract, whether justifiable or censurable, can have no influence on its validity.

"They were such as had sufficient influence with himself, 82
and he had a right to act upon them.

"A Court cannot enter into them when deciding on its jurisdiction.

"The conveyance appears to be a real transaction, and the real as well as nominal parties to the suit are citizens of different States."

In *Barney vs. Baltimore City, 6 Wall., 280*, the conveyance was made for the purpose of conferring jurisdiction of the case in the Federal Court; was without consideration, and 83
the grantee, on request of the grantors, was to re-convey to them. In point of fact, says the Court, the conveyance did not transfer the real interest of the grantors. There was a distinct understanding that the grantors retained all their real interest, and the deed was to have no other effect than to give jurisdiction to the Court. The Court will not, under such circumstances, give effect to what is a fraud upon the Court and is nothing more. So, too, in the case of *Smith vs. Kernochen, 7 How., 216*, cited by the other side, it is truly 84
said that the suit is then in fact a controversy between the grantor and the Defendants, notwithstanding the conveyance. And, at page 288, the Court says: "If the conveyance really transferred the interests of the former to the latter, although made for the purpose of enabling the Court to entertain the jurisdiction of the case, it would have accomplished the purpose."

The rule was very fairly stated by Mr. Hale, one of the Counsel, as follows, in *18 Howard, 78—Jones vs. League:* "The judi-
85 cial power vested by the Constitution extends to controversies, not merely suits, between citizens of different States; and in determining the limits of this power we are to look to things, not names. *McNutt vs Bland, 2 How., 9.* The true rule as to the matters presented by the plea is well settled to be that when a conveyance is made for a valuable consideration by a citizen of one State to a citizen of another State, its effect is to give the right to one, although the principal motive which influenced both parties may have been a desire to
86 give jurisdiction to Courts of the United States. *Smith vs. Kernochen, 7 How., 215–217; McDonald vs Smalley, 1 Pet., 623.* But the converse is equally true, that when no valuable consideration passes, and the grantee receives the legal title for the avowed purpose of giving jurisdiction to Courts of the United States, while the real party in interest remains a citizen of the same State as the Defendants, then the Court will not permit such a fraud upon the laws and the policy of the government, but will look into the transaction on a plea in abatement, and ascertain the real party to
87 the suit without regard to the form of the conveyance or of the action. *Maxfield's Lessee vs. Levy, 2 Dall., 381; S. C., 4 Dall., 330; Hurst's Lessee vs. Neil, 1 Wash. C. C. R., 70–81; Smith vs. Kernochen, 7 How., 215–217.*"

And the Court, page 81, same case, says: "But it very clearly appears from the deed of conveyance to the Plaintiff by Power that it was only colorable, as the suit was to be prosecuted for the benefit of the grantor, and the one-third
88 of the lands to be received by the Plaintiff was in consideration that he should pay one-third of the costs and superintend the prosecution of the suit. The owner of a tract of land may convey it in order that the title may be tried in the Federal Courts, but the conveyance must be made *bona fide* so that the prosecution of the suit shall not be for his benefit."

In *Briggs vs. French, supra*, Judge Story says: "But it is said that the conveyance was made to the present Plaintiff solely with the view to give jurisdiction to the Court, and, 89
if so, that it is utterly void, and the present bill must be dismissed. *Prima facie*, the conveyance must be taken to be, what it purports to be, a conveyance *bona fide*, and for a valuable consideration. And the burthen of proof is upon the Defendant, who sets it up as a matter of defence, to establish the contrary fact, for which he contends. Now, there is a total absence of any such proof in the cause; and there is positive proof that the conveyance to Lovel and Delano, under whom the Plaintiff claims title, was for a full consider- 90
ation. The defence then fails for the want of any suitable proofs."

"But I take this occasion to say that I am by no means prepared to admit the doctrine which this point of the defence supposes. I am yet to learn that a conveyance made by a party to a citizen of another State for the purpose of enabling the latter to maintain a suit on it in a Court of the United States is not in point of law operative to pass the legal title between the parties. I know of no law that pro- 91
hibits such a conveyance, or declares it inoperative. Nor do I well understand how a mere stranger to the title, not claiming under either of the parties, has a right to inquire into the motive of such a conveyance. The most, it seems to me, that can arise from establishing a conveyance to be of this sort, is to throw back the Plaintiff upon the same equities which would have applied to the title in the hands of his grantor. But I cannot perceive how it defeats the legal estate vested in him by the conveyance. He may hold the legal estate as trustee for the grantor; but that does not 92
affect the legal validity of the conveyance. Any man has a right to convey his estate in trust for himself, unless such trust be prohibited by law. I know of no such law applicable to a case of this sort."

2d Sumner, pp. 254–255.

The present case is this: Corbin sold and delivered the

bond in suit to Bradley. The testimony of Bradley and Corbin concur in this, and there is no other testimony.

93 See testimony, pages 8, 9, 16, 17 and 31.

See interrogatories to Bradley, on page 35.

Corbin, in his letter to Bradley, June 4th, 1877, says: "I desire to sell you a bond," etc. "I value the bond at the amount still due on the face of it, and wish you to pay me that amount for it ($10,000), but I will require you to pay me for the same * * when you shall have collected the amount from the Company, and what you shall collect from the Company, less the cost and expenses of collection * *. I wish you to pay me ten dollars down on account of pur-
94 chase money."

Bradley answers: "I accept bond on terms you offer. You will find enclosed check for ten dollars, for which you will please hand my attorney, Mr. Stone, a receipt."

The bond was delivered, and the purchase money paid and agreed to be paid—part cash, part credit.

There can be no doubt but the *title* to the bond passed from Corbin to Bradley under this agreement, and 'tis true only a small part of what was stated and believed to be the
95 real value of the bond was paid down, but the remaining portion was agreed to be paid in the future.

In the cases cited and relied on by the Appellants (*Barney vs. Baltimore*), there was an express agreement that the conveyance of the land in question should not change the title to the property, and that it was only made to give jurisdiction to the United States Court.

There is no *like or equivalent stipulation* between Corbin and Bradley. Bradley acquires *title* to the *bond* in the way
96 title to such property is by law acquired.

Thompson vs. Lee County, 3 Wall., 327.

He is not, under any circumstances, to return it to Corbin. Thus the sale is as absolute as it could be made.

"The moment," says Judge Story in *Briggs vs. French, 2 Sumner, 256*, "such a conveyance is made; if the legal title passes, there does exist a controversy between the grantee and and any adverse claimant who is a citizen of another State

to which the terms" (of the Constitution and of the Judiciary Act) "apply."

Now, the present suit answers that description. 97

Now, as to the right of C. C. Puffer, Receiver, to sell the bond to Coe, or Corbin's. See his testimony, pages 17, 18 and 19.

He was a Receiver, appointed by the State Court for Charleston County, S. C.

In his testimony he says that he had an order from the Judge authorizing the sale; that if the order is not on record, then it is lost. (Testimony, page 19.) 98

The defence have shown the order is not in the Receiver's papers, and not of record in State Court.

The contents of a paper proved to be lost can be proved by secondary testimony.

The order to exchange the bond of the Appellant Corporation for the stock of said Company is emphatically sworn to by Mr. Puffer (page 19).

He reported the exchange, as we have already seen, to the Court in his final account, and that report was approved, and he and his bond were discharged. 99

Now, upon the state of facts, (found to be true by the Court below) *who* can question the transaction, and *where* can it be questioned?

It is plain that any party to the suit, and interested in the property in which Receiver Puffer was appointed, might question it, and in that suit. But a stranger to the suit, and without interest, cannot do so.

Volunteers without interest, mere intermeddlers, have never received much consideration from the Courts. It is 100 a matter of settled law that the several parties in interest must be before the Court, and others are unnecessary. Authorities to this point are unnecessary.

There are no parties in this cause among the Defendants that claim the slightest interest in the fund in the case of Dabney, Morgan & Co., in which C. C. Puffer was Receiver.

They could not, therefore, have appeared even in that

case and questioned Puffer's transactions as Receiver. *High of Receivers, Sec. 802.* Much less can they question his acts
101 in this Court and in this cause.

Now, suppose an order to have been irregularly made, directing the sale of said bond by Puffer for the stock held by Coe, that is, made by the Court without notice, and not recorded by accident, or otherwise, and the fund lost by it, by whom and where shall the error be corrected?

In the case of *Libby vs. Rosekraus, 55 Barb., 219*, the Court says: "Where a Court of Equity properly acquires jurisdiction of the parties and subject-matter in a cause, and ap-
102 points a Receiver therein, and orders him to sell the property in controversy, such order, although irregular and improvident, cannot be assailed or questioned in a collateral action, and such an action will not lie to set aside the order of sale and proceedings thereunder. The appropriate method of correcting such irregularities is by motion to the Court making the order, and an independent action for that purpose will not be entertained."

The Court below properly held that the action of Receiver Puffer in selling this bond, having been approved by the
103 State Court, could not be questioned in this collateral action.

But the Appellant Company and stockholders have no right to question the action of Receiver Puffer, because they are estopped by their own action in the renewal endorsement made upon the bond after it had passed out of the hands of the Receiver; and by acquiescence for three years—payment of the interest and of one-half the principal.

Under the seal of the Corporation they waive all set-off or other defence to the bond, and agree to pay it to bearer.
104 See testimony of Corbin and Tomlinson, pages 7, 8, 24, and 25, and admissions of Appellant Company's answer.

As to the liability of the Appellant stockholders named.

In their answers they simply plead to the jurisdiction as first above set out, and aver payment of the bond.

The facts show the bond was not paid, and that defence fails, as the Court finds.

Certain of the stockholders are decreed against for unpaid subscriptions, and others are omitted.

The Court below merely says: "The Defendants named as stockholders are, by the charter of the Company, jointly and severally liable for said debt, and the execution decreed against the Company may, by the terms of the charter, be levied upon their property, or the property of either of them." 105

It will be noticed that the Appellant Company is not alleged to be insolvent in the complaint, but the Complainant merely, for purposes not disclosed, choses to make these stockholders Defendants, and fixes their personal responsibility. 106

See *Dodge vs. Minnesota Plastic Slate Roofing Co., 16 Minn., 368*, where suit against Corporation and three of its stockholders maintained.

It is now too late for these Defendants to claim that there are other stockholders also liable.

The non-joinder of other stockholders should have been taken ~~their~~ advantage of by plea, which has not been done in this case. *Allen vs. Sewell, 2 Wend., 327.*

See *Thompson's Liability of Stockholders, 350*, and authorities. 107

X—XI—XII.

To these items of error it is only necessary to say that the proceeding is for foreclosure of a lien and the subject of equitable jurisdiction. The ascertainment of the amount of the debt, as well as by whom due and owing, is a necessary part of the proceeding, and none have been charged with it who are not by law jointly, as well as severally, liable for it. 108

Mr. Lord's

PROPOSITION IV

is as follows:

"*That Corbin, having acquired the bond while President, in*

exchange for stock which had cost $15,000, and was worth far less than that sum on the market, could only recover from the
109 *Company the amount actually paid, to wit: the market value of the stock, less the sum of $10,000, which he received from the Company in December, 1876, (folio 23) and the Complainant, having acquired the bond after it had become discharged, takes it subject to all the equities to which it would have been subject in the hands of his assignor.*"

All that need be said to this is, that there is no proof of the value of the stock paid for the bond, and, without that,
110 it would be fruitless to argue this proposition even if we were to suppose, which we do not, that the Company has any claim upon Plaintiff, because Corbin took up the bond out of his private means, to the great relief of the Company, while he was its President.

And as to his

PROPOSITION V,

which is as follows:
111

"*That Bradley and Corbin having both been stockholders "when the bond was executed, and being both liable for the "debt, are not entitled to receive the full amount of the bond "from the other stockholders, but are only entitled to contribu-"tion from them in proportion to their interest in the Company.*"

In the first place, there is no evidence that Bradley was a stockholder when the bond was executed, nor that he is now
112 or was at the commencement of this suit a stockholder.

Mr. Corbin says he *thinks he was* a stockholder when the bond was transferred to him.

That is no satisfactory proof even of that point while the stock-books were in possession of Defendants, and used at Mr. Gibbon's examination. Mr. Corbin is not a party to the case.

The liability of the stockholders is joint and several. If

there is a partnership, it has not been proved that Bradley is or ever was a partner.

This is not a suit to compel calling in the assets of a corporation for payment of debts as in the South Carolina case of *Hume vs. Winyaw Co.*, on the authority of *Salmon vs. Homborough Co., Temp. Car. 11; 1 Cases in Chan., 204;* but of a creditor pursuing a debtor and obtaining judgment in the direct way pointed out by law. 113

It does seem to be true, as claimed, that under the terms of the Company's charter, Sec. 33, the judgment against the Company would be sufficient, and that under the execution the debt may be levied and made from the property of the stockholders. 114

SUMMARY.

There are some things in this case that are not disputed because they cannot be doubted:

1. The debt is a just, honest and lawful debt. It is for money borrowed and used by Appellants. 115

2. It has never been been paid by the Appellants. They say Corbin paid it. He denies—says he bought it.

Whichever way this was, it was done by his means, not Appellants'.

3. After it was in Corbin's possession, Appellants accepted indulgence, promised to pay to bearer and waived all set off or other defence. Plaintiff says they knew, at the time, of Corbin's ownership. They deny it. He produces proof. They do not. 116

4. They paid half the debt and interest for three years without objection and until a particular juncture, and then refused.

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4. They paid half the debt and interest for three years without objection and until a particular juncture, and then refused.

5. Corbin held it all that time, then sold it to Plaintiff because, as he says, he thought Appellants more likely to
117 pay Plaintiff than to pay him, and he didn't wish to sue the Company of which he had been President.

6. The Appellants disregard their contract to pay to bearer and to waive all set off or other defence. They do refuse to pay to the bearer. They claim a set off and set up other defence.

7. The main question is on the plea to the jurisdiction.
118 Whether the sealed promise of a mining corporation to pay money to the bearer or holder is negotiable, and the title to it passes by delivery of possession without an assignment.

JAMES B. CAMPBELL.

January 16th, 1882.